E GENERAL STATUTES OF NORTH CAROLINA

1985 CUMULATIVE SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,
K. S. MAWYER, P. R. ROANE AND S. S. WEST

Volume 3D, Part I

1982 Replacement

Annotated through 329 S.E.2d 896. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1985

Preface

This Cumulative Supplement to Replacement Volume 3D, Part I contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1985 Regular Session which are within the scope of such volume, and brings to date the annotations included therein.

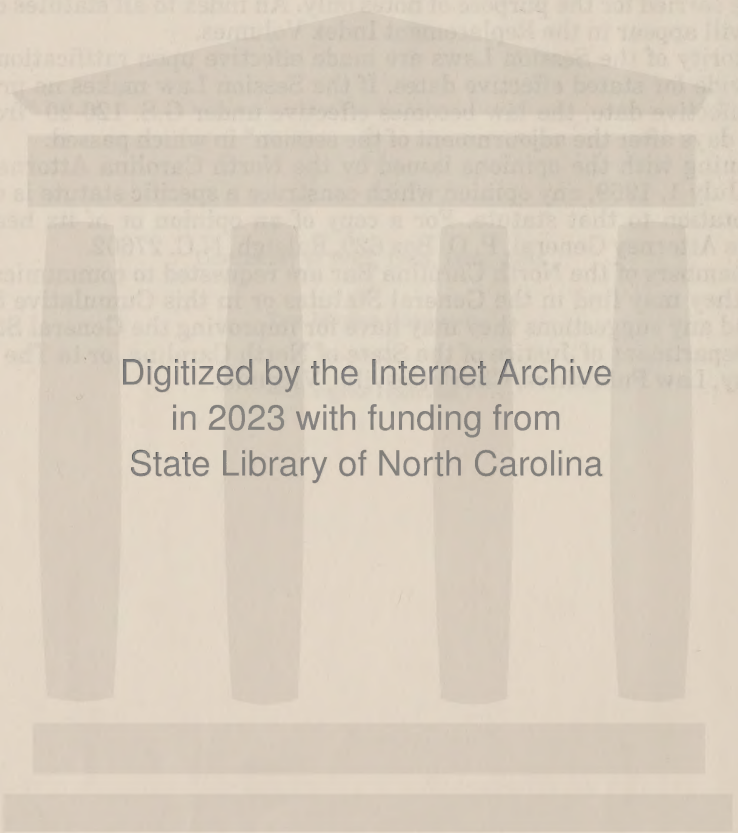
Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1985 Regular Session affecting Chapters 157 through 160B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 313, p. 337.
North Carolina Court of Appeals Reports through Volume 73, p. 335.
South Eastern Reporter 2nd Series through Volume 329, p. 896.
Federal Reporter 2nd Series through Volume 761, p. 712.
Federal Supplement through Volume 607, p. 1490.
Federal Rules Decisions through Volume 105, p. 250.
Bankruptcy Reports through Volume 48, p. 873.
Supreme Court Reporter through Volume 105, p. 2370.
North Carolina Law Review through Volume 63, p. 809.
Wake Forest Law Review through Volume 20, p. 540.
Campbell Law Review through Volume 7, p. 298.
Duke Law Journal through 1983, p. 1142.
North Carolina Central Law Journal through Volume 14, p. 680.
Opinions of the Attorney General.

The General Statutes of North Carolina
1985 Cumulative Supplement

VOLUME 3D, PART I

Chapter 157.
Housing Authorities and Projects.

Article 1.
Housing Authorities Law.

§ 157-2. Finding and declaration of necessity.

CASE NOTES

Eviction for Nonpayment of Utilities. — Tenant was properly evicted for nonpayment of utilities under a lease provision that "all utilities shall be paid by the Resident. If utilities are discontinued because of nonpayment, this will result in immediate eviction." A dwelling without utilities, such as water, sewer, or electricity, certainly creates a situation where unsafe and unsanitary dwelling accommodations would exist, and which are problems properly identified and sought to be corrected by this section. Maxton Hous. Auth. v. McLean, 70 N.C. App. 550, 320 S.E.2d 322, cert. denied as to additional issues, 312 N.C. 623, 323 S.E.2d 923 (1984).

In an action to evict a tenant for nonpayment of utilities, the housing authority is not required to allege and prove that any physical damage to the apartment has occurred because the utilities have been cut off. Maxton Hous. Auth. v. McLean, 70 N.C. App. 550, 320 S.E.2d 322, cert. denied as to additional issues, 312 N.C. 623, 323 S.E.2d 923 (1984).

Suit against Party Named in Lease. — The law of this State allows the housing authority to sue in summary ejectment the party whose name alone is on the lease. Maxton Hous. Auth. v. McLean, 70 N.C. App. 550, 320 S.E.2d 322, cert. denied as to additional issues, 312 N.C. 623, 323 S.E.2d 923 (1984).

§ 157-9.1. Moderate income.

(a) Whenever the words "low income" appear in this Chapter, they shall be construed to mean "low and moderate income."

(b) This section applies only to the housing authority of the largest city in a county which has two or more cities with a population of 60,000 or over, according to the most recent decennial federal census.

(c) This section shall apply only to existing, non-federally subsidized structures. (1983, c. 769, s. 1.)

Editor's Note. — Session Laws 1983, c. 769, s. 2, makes this section effective upon ratification. The act was ratified July 15, 1983.

§ 157-13. Zoning and building laws.

Legal Periodicals. — For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761.

CASE NOTES

A town council may not violate at will the regulations it has established for its own procedure; it must comply with the provisions of the applicable ordinance. This requirement is necessary in order to accord due process and equal protection to applicants and to refute charges that any denial is an arbitrary discrimination against the property owner. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

§ 157-29. Rentals and tenant selection.

It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding;

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental; and

(5) It shall not terminate or refuse to renew a rental agreement other than for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulations, without regard to fault on the part of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. § 866.4(f) as it may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150; 1985, c. 741, s. 2.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, deleted "and" at the end of the second subdivision (3), substituted a semicolon and "and" for a period at the end of subdivision (4), and added new subdivision (5).

§ 157-29.1. Fraudulent misrepresentation.

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive housing assistance in the amount or value of not more than four hundred dollars ($400.00) is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(b) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, or continues to receive housing assistance in the amount or value of more than four hundred dollars ($400.00) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, body politic, partnership, or other group, entity, or organization. (1985, c. 741, s. 1.)

Editor's Note. — Session Laws 1985, c. 741, s. 3 makes this section effective October 1, 1985.

ARTICLE 3.

Eminent Domain.

§ 157-51: Repealed by Session Laws 1983, c. 149, effective April 7, 1983.

ARTICLE 5.

State Indian Housing Authority.

§ 157-70. Rentals and tenant selection in accordance with § 157-29.

Rentals and tenant selection in connection with projects of the Authority shall be in accordance with G.S. 157-29. (1977, c. 1112, s. 5; 1983 (Reg. Sess., 1984), c. 1068.)

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 2, 1984, deleted "except that tenants in such projects shall be Indians" at the end of this section.

Chapter 158.

Local Development.

Article 1.

Local Development Act of 1925.

§ 158-1: Repealed by Session Laws 1973, c. 803, s. 37.

Cross References. — See now §§ 158-7.1, 158-7.2.

Editor's Note. — The above repeal line has been set out at the direction of the Revisor of Statutes.

§ 158-2: Repealed by Session Laws 1973, c. 803, s. 38.

Cross References. — See now §§ 158-7.1, 158-7.2.

Editor's Note. — The above repeal line has been set out at the direction of the Revisor of Statutes.

§ 158-7.1. Local development.

(a) Each county and city in this State is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(b) (For applicability see note below) A county or city may undertake the following specific economic development activities. (This listing is not intended to limit by implication or otherwise the grant of authority set out in subsection (a) of this section). The activities listed in this subsection (b) may be funded by the levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use in not otherwise restricted by law.

(1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.

(2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while a city may acquire such property inside the city or, if the property will be used by a business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled pursuant to this paragraph pursuant to subsection (d) of this section.

(3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.

(4) A county or city may acquire or construct one or more "shell buildings", which are structures of flexible design adaptable for use by a variety of industrial or commercial businesses. A county or city may convey or lease a shell building or space in a shell building pursuant to subsection (c) of this section.

(5) A county or city may extend or may provide for or assist in the extension of utility services to an industrial facility, whether the utility is publicly or privately owned.

(c) (For applicability see note below) Any appropriation or expenditure pursuant to subsection (b) of this section must be approved by the county or city governing body after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held. The notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition.

(d) (For applicability see note below) A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection (d). A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to; the consideration for the conveyance may not be less than the value so determined.

(e) (For applicability see note below) All appropriations and expenditures pursuant to subsections (b) and (c) of this section shall be subject to the provisions of the Local Government Budget and Fiscal Control Acts of the North Carolina General Statutes, respectively, for cities and counties. The budget format for each such governing body shall make such disclosures in such detail as the Local Government Commission may by rule and regulation direct.

(f) (For applicability see note below) All appropriations and expenditures pursuant to subsections (b) and (c) of this section shall be subject to the following limitations: No county or city shall have an aggregate investment outstanding at any one time which exceeds one-half of one percent (0.05%)

[(0.5%)] of the outstanding assessed property tax valuation for the governing body as of January 1 of each year, beginning January 1, 1986. (1973, c. 803, s. 37; 1985, c. 639, s. 1.)

Applicability of Subsections (b) to (f). — Session Laws 1985, c. 639, s. 4, makes subsections (b) to (f) applicable only to Stanly, Iredell, Northampton, Montgomery, Anson, Bertie, Duplin, Jones, Forsyth, Hertford and Gates Counties and the municipalities located in those counties.

Editor's Note. — The phrase "(0.5%)" has been inserted in brackets in subsection (f) as the phrase "(0.05%)" in the 1985 act was apparently a typographical error.

Effect of Amendments. — The 1985 amendment, effective Jan. 1, 1986, designated the first paragraph as subsection (a) and added subsections (b) to (f). For the applicability of subsections (b) to (f), see the note above.

Chapter 159.

Local Government Finance.

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

Article 2.

Local Government Commission.

Sec.
159-5. Secretary and staff of the Commission.
159-6. Fees of the Commission.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

Article 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

159-7. Short title; definitions; local acts superseded.
159-17.1. Vending facilities.

Part 3. Fiscal Control.

159-30. Investment of idle funds.
159-31. Selection of depository; deposits to be secured.

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 4.

Local Government Bond Act.

Part 1. Operation of Article.

159-48. For what purposes bonds may be issued.

Article 5.

Revenue Bonds.

159-80. Short title; repeal of local acts.
159-81. Definitions.
159-83. Powers.
159-84. Authorization of revenue bonds.
159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.
159-86. Approval of application by Commission.

Sec.
159-88. Adoption of revenue bond order.
159-89. Special covenants.
159-90. Limitations on details of bonds; additional provisions.
159-91. Lien of revenue bonds.
159-92. Status of revenue bonds under Uniform Commercial Code.
159-93. Agreement of the State.
159-94. Limited liability.
159-95. Approval of State agencies.
159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.
159-97. Taxes for supplementing revenue bond projects.

Article 7.

Issuance and Sale of Bonds.

159-120. Definitions.
159-123. Sale of bonds by sealed bids; private sales.
159-128. Makeup and formal execution of bonds; temporary bonds.
159-129. Obligations of units certified by Commission.
159-134. Fiscal agents.
159-139. Destruction of cancelled bonds, notes, and coupons.
159-141. Terms and conditions of sale.

Article 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

159-160. Definitions.
159-163. Security of revenue bond anticipation notes.
159-164. Form of notes to be issued.
159-165. Sale and delivery of bond anticipation notes.

Part 2. Tax, Revenue and Grant Anticipation Notes.

159-172. Authorization and issuance of notes.

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

ARTICLE 2.

Local Government Commission.

§ 159-5. Secretary and staff of the Commission.

The chairman shall appoint a secretary of the Commission, and may appoint such other deputies and assistants as may be necessary, who shall be responsible to the chairman through the secretary. The secretary and his deputies and assistants shall have and may exercise any power that the chairman himself may exercise. All actions taken by the secretary, including the signing of any documents and papers provided for in this Chapter, shall be effective as though the chairman himself had taken such action or signed such documents or papers. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1983, c. 717, s. 91.)

Editor's Note. — Session Laws 1983, c. 717, s. 1, provides: "This act may be cited as the Separation of Powers Act of 1983."

Effect of Amendments. — The 1983 amendment, effective July 11, 1983, deleted the former second sentence, which read "The salary of the secretary shall be fixed by the Governor with the approval of the Advisory Budget Commission."

§ 159-6. Fees of the Commission.

(e) In addition to any other fees authorized by this section, the Commission may charge and collect fees for services rendered and expenses incurred in reviewing and processing petitions of counties or cities concerning use of local sales and use tax revenue in accordance with G.S. 105-487(c). (1981 (Reg. Sess., 1982), c. 1175; 1983, c. 908, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 21, 1983, added subsection (e).

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, and to maintain sinking funds.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (G.S. 143-1 through 143-34.5) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the Executive Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (G.S. 143-1 through 143-34.5) and that has the power to levy taxes, and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Town of Dobbins Heights: 1983, c. 658.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective Oct. 1, 1984, added subdivision (b)(16).

§ 159-10. Budget requests.

CASE NOTES

Cited in In re Wesleyan Educ. Center, 68 N.C. App. 742, 316 S.E.2d 87 (1984).

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

CASE NOTES

Cited in In re Wesleyan Educ. Center, 68 N.C. App. 742, 316 S.E.2d 87 (1984).

§ 159-17. Ordinance procedures not applicable to budget or project ordinance adoption.

Local Modification. — City of Wilmington: 1983, c. 367.

§ 159-17.1. Vending facilities.

Moneys received by a public authority, special district, or unit of local government on account of operation of vending facilities shall be deposited, budgeted, appropriated, and expended in accordance with the provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 174.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 175, makes this section effective Oct. 1, 1984.

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Part 3. Fiscal Control.

§ 159-30. Investment of idle funds.

(b) Moneys may be deposited at interest in any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits, including investment deposits of the mutual fund for local government investment created by G.S. 159-30(c)(6a), shall be secured as provided in G.S. 159-31(b).

(1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 amendment, effective April 8, 1983, inserted "savings and loan association" following "bank" in the first sentence of subsection (b) and inserted "including investment deposits of the mutual fund for local government investment created by G.S. 159-30(c)(6a)" in the second sentence of subsection (b).

§ 159-31. Selection of depository; deposits to be secured.

(a) The governing board of each local government and public authority shall designate as its official depositories one or more banks, savings and loan associations, or trust companies in this State or, with the written permission of the secretary, a national bank located in another state. In addition, a unit or public authority, with the written permission of the secretary, may designate a state bank or trust company located in another state as an official depository for the purpose of acting as fiscal agent for the unit or public authority. The names and addresses of the depositories shall be reported to the secretary. It shall be unlawful for any public moneys to be deposited in any place, bank, or trust company other than an official depository, except as permitted by G.S. 159-30(b); however, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(b) The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety bonds, or investment securities of such nature, in a sufficient amount to protect the local government or public authority on account of deposit of funds made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank, savings and loan association, or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the maturity date. (1927, c. 146, s. 19; 1929, c. 37; 1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; c. 134; 1953, c. 675, s. 28; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 26; 1979, c. 637, s. 1; 1981, c. 447, s. 2; 1983, c. 158, s. 3.)

Effect of Amendments. —

The 1983 amendment, effective April 8, 1983, inserted "savings and loan associations" in the first sentence of subsection (a) and inserted "savings and loan association" in the last sentence of subsection (b).

Part 4. Public Hospitals.

§ 159-39. Special regulations pertaining to public hospitals.

CASE NOTES

Applied in National Medical Enters., Inc. v. Sandrock, — N.C. App. —, 324 S.E.2d 268 (1985).

Part 6. Joint Municipal Power Agencies and Joint Municipal Assistance Agencies.

Editor's Note. — Session Laws 1983, c. 609, s. 10, added "and Joint Municipal Assistance Agencies" to the heading of Part 6.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-48. For what purposes bonds may be issued.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.

(2) Providing armories for the North Carolina national guard.

(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.

(4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.

(5) Providing cemeteries.

(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.

(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

(8) Providing land for corporate purposes.

(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.

(10) Providing library facilities, including without limitation fixed and mobile libraries.

(11) Providing art galleries, museums, and art centers, and providing for historic properties.

(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.

(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.

(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.

(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.

(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.

(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.

(20) Providing voting machines.

(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.

(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.

(24) (For applicability see note below) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.

(1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Applicability of Subdivision (b)(24). — Session Laws 1985, c. 639, s. 4, makes subdivision (b)(24) applicable only to Stanly, Iredell, Northampton, Montgomery, Anson, Bertie, Duplin, Jones, Forsyth, Hertford and Gates Counties and the municipalities located in those counties.

Cross References. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

Effect of Amendments. — The 1985 amendment, effective Jan. 1, 1986, added subdivision (b)(24). For the applicability of subdivision (b)(24), see the note above.

Part 2. Procedure for Issuing Bonds.

§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.

CASE NOTES

Cited in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-55. Sworn statement of debt; debt limitation.

CASE NOTES

Applied in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-57. Hearing; passage of bond order.

CASE NOTES

Stated in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-59. Limitation of action to set aside order.

CASE NOTES

Cited in Wright v. County of Macon, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

Article 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

(a) This Article may be cited as "The State and Local Government Revenue Bond Act."

(b) It is the intent of the General Assembly by enactment of this Article to prescribe a uniform system of limitations upon and procedures for the exercise by all municipalities in North Carolina of the power to finance revenue bond

projects through the issuance of revenue bonds and notes. To this end, all provisions of special, local, or private acts in effect as of July 1, 1973, authorizing the issuance of bonds or notes secured solely by the revenues of the projects for which the bonds or notes are issued or prescribing procedures therefor are repealed. No special, local or private act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section of this Article. It is further the intent of the General Assembly by enactment of this Article to provide an alternative and supplemental procedure for the exercise by the State of North Carolina of the power to finance revenue bond projects through the issuance of revenue bonds and notes. (1971, c. 780, s. 1; 1973, c. 494, s. 14; 1983, c. 554, ss. 1, 1.1.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, inserted "State and" in subsection (a) and added the last sentence of subsection (b).

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(2) "Revenue bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses,

where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.

d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.

e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.

g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.

h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.

i. Hospitals and other health-related facilities.

j. Public auditoriums, gymnasiums, stadiums, and convention centers.

k. Recreational facilities.

l. In addition to the foregoing, in the case of the State of North Carolina, any other project authorized by the General Assembly.

m. (For applicability see note below) Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Applicability of Paragraph (3)m. — Session Laws 1985, c. 639, s. 4, makes paragraph (3)m applicable only to Stanly, Iredell, Northampton, Montgomery, Anson, Bertie, Duplin, Jones, Forsyth, Hertford and Gates Counties and the municipalities located in those counties.

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26 makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, inserted "the State of North Carolina or" in subdivision (2), added subdivision (3)l, and in subdivision (4) inserted three references to the State and inserted "as the case may be" preceding "pertaining to the project."

The 1985 amendment, effective Jan. 1, 1986, added paragraph (3)m. For the applicability of paragraph (3)m, see the note above.

§ 159-83. Powers.

(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the cost of acquisition, construction, reconstruction, extension, or improvement of the revenue bond projects authorized in the bond order and to provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation

of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds.

(b) Any contract, agreement, lease, deed, covenant, or other instrument or document evidencing an agreement or covenant between bondholders or any public agency and the State or a municipality issuing revenue bonds with respect to any of the powers conferred in this section shall be approved by the commission. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2; 1969, c. 1118, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 17; 1983, c. 554, ss. 3-4; 1985, c. 723, s. 2.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circum-

stances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, substituted "they may now or hereafter have, the State and each municipality" for "it may now or hereafter have, each municipality" in the introductory paragraph of subsection (a); in subdivisions (a)(1) and (a)(2) inserted "(i) in the case of the State, by the Council of State and (ii) in the case of a municipality"; in subdivisions (a)(4) and (a)(15) inserted "(i) in the case of the State, as the Council of State and (ii) in the case of a municipality"; in subdivision (a)(5) inserted two references to the State and the language "as the case may be"; in the last sentence of subdivision (a)(6) inserted "the State or"; in clause (v) of subdivision (a)(9) inserted "or under any act of the General Assembly"; in subdivision (a)(15) inserted "as" preceding "and for such term of years"; in subdivision (a)(16) substituted "necessary or therein in the exercise of the powers" for "necessary or convenient in the exercise of the powers" and inserted "State or a" and "as the case may be"; and in subsection (b) inserted a reference to the State.

The 1985 amendment, effective July 12, 1985, added the language beginning "and to select and retain subject to approval of the Local Government Commission" at the end of subdivision (a)(14).

§ 159-84. Authorization of revenue bonds.

The State and each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the State or a municipality, as the case may be, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the State or the municipality, as the case may be, incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, the State or each municipality, as the case may be, may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter or any other law.

Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either, (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series or [of] refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, (iv) certificates of deposit issued by a bank or trust company located in

the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78. (1953, c. 692; 1969, c. 1118, s. 4; 1971, c. 780, s. 1; 1977, c. 201, s. 3; 1983, c. 554, s. 5.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, inserted references to the State in the first and second paragraphs, inserted "as the case may be" in three places in those two paragraphs, and inserted "or any other law" at the end of the last sentence of the second paragraph.

§ 159-85. Application to Commission for approval of revenue bond issue; preliminary conference; acceptance of application.

(a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application.

(b) Before he accepts the application, the secretary may require (i) in the case of the State, the State Treasurer or (ii) in the case of a municipality, the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps taken in issuing the bonds.

(c) After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the State

Treasurer or the municipality, as the case may be, in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the State or the municipality, as the case may be, has complied with this section. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 18; 1983, c. 554, s. 6.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, rewrote this section, inserting the references to the State and the State Treasurer.

§ 159-86. Approval of application by Commission.

(a) In determining whether a proposed revenue bond issue shall be approved, the Commission may consider:

(1) Whether the project to be financed from the proceeds of the revenue bond issue is necessary or expedient.

(2) Whether the proposed project is feasible.

(3) The State's or the municipality's, as the case may be, debt management procedures and policies.

(4) Whether the State or the municipality, as the case may be, is in default in any of its debt service obligations.

(5) Whether the probable net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.

(6) The ability of the Commission to market the proposed revenue bonds at reasonable rates of interest.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved.

(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed revenue bond issue is necessary or expedient.

(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.

(3) That the proposed project is feasible.

(4) That the State's or the municipality's, as the case may be, debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.

(5) That the proposed revenue bonds can be marketed at reasonable interest cost to the State or the municipality, as the case may be. (1971, c. 780, s. 1; 1983, c. 554, ss. 7, 8.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, substituted "State's or the municipality's, as the case may be," for "unit's" in subdivisions (a)(3) and (b)(4), and substituted "State or the municipality, as the case may be" for "unit" in subdivision (a)(4) and for "issuing unit" at the end of subdivision (b)(5).

§ 159-88. Adoption of revenue bond order.

(a) At any time after the Commission approves an application for the issuance of revenue bonds, (i) in the case of the State, the Council of State and (ii) in the case of a municipality, the governing board of the municipality may adopt a revenue bond order pursuant to this Article.

(b) Notwithstanding the provisions of any city charter, general law, or local act, a revenue bond order may be introduced at any regular or special meeting of the governing board of a municipality and adopted at such a meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article. Revenue bond orders are not subject to the provisions of any city charter or legal act concerning initiative or referendum.

(c) Notwithstanding any other provision of this Article, no bond order authorizing the issuance of revenue bonds of the State shall be adopted by the Council of State until such time as the General Assembly shall have enacted legislation authorizing the undertaking of the revenue bond project to be financed and fixing the maximum aggregate principal amount of revenue bonds that shall be issued for such purpose, and such legislation shall have taken effect. (1971, c. 780, s. 1; 1973, c. 494, s. 19; 1983, c. 554, s. 9.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State

shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, rewrote this section.

§ 159-89. Special covenants.

A revenue bond order or a trust agreement securing revenue bonds may contain covenants as to

(9) The preparation and maintenance of a budget with respect to the expenses of the State or a municipality, as the case may be, for the operation and maintenance of revenue bond projects.

(Ex. Sess. 1938, c. 2, s. 6; 1971, c. 780, s. 1; 1983, c. 554, s. 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, substituted "expenses of the State or a municipality, as the case may be" for "expenses of the municipality" in subdivision (9).

§ 159-90. Limitations on details of bonds; additional provisions.

(a) In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122.

(2) Any bond may be made the subject to redemption prior to maturity, including redemption on demand of the holder, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall

have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the State Treasurer or the issuing municipality, as the case may be, may determine.

(b) In addition to the foregoing provisions of this section, in fixing the details of revenue bonds the State or the issuing municipality, as the case may be, may provide that bonds

(1) May be made payable from time to time on demand or tender for purchase by the owner provided a Credit Facility supports such bonds, unless the Commission specifically determines that a Credit Facility is not required upon a finding and determination by the Commission that the proposed bonds will satisfy the conditions set forth in G.S. 159-86(b);

(2) May be additionally supported by a Credit Facility;

(3) May be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated in the bond order or trust agreement or with such variations as may be permitted in connection with a Par Formula provided in such bond order or trust agreement;

(4) May bear interest, notwithstanding the provisions of G.S. 159-125(a), at a rate or rates that may vary as permitted pursuant to a Par Formula and for such period or periods of time, all as may be provided in the bond order or trust agreement; and

(5) May be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds to new purchasers prior to their presentment for payment to the provider of the Credit Facility or to the issuing municipality or the State.

No Credit Facility, repayment agreement, Par Formula or remarketing agreement shall become effective without the approval of the Commission.

As used in this subsection, the following terms shall have the following meanings:

"Credit Facility" means an agreement entered into by an issuing municipality or by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banker or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal (whether at maturity, presentment for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds payable on demand or tender by the owner issued in accordance with this section, in consideration of the issuing municipality or the State agreeing to repay the provider of such Credit Facility in accordance with the terms and provisions of such repayment agreement, provided, that any such repayment agreement shall provide that the obligation of the issuing municipality or the State thereunder shall have only such sources of payment as are permitted for the payment of bonds issued under this Article.

"Par Formula" shall mean any provision or formula adopted by the issuing municipality or the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds so that the purchase price of such bonds in the open market would be as close to par as possible. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081; 1967, c. 100, s. 1; c. 711, s. 2; 1969, c. 688, s. 1; 1971, c. 780, s. 1; 1983, c. 554, s. 11; 1985, c. 265, s. 1.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Session Laws 1985, c. 265, ss. 3 to 5 provide:

"Sec. 3. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Sec. 4. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, in present subsection (a), substituted "the State or the issuing municipality, as the case may be" for "the issuing municipality" in the introductory paragraph, deleted "No bonds may be made payable on demand, but" at the beginning of subdivision (2), inserted "including redemption on demand of the holder" in the first sentence of subdivision (2), and substituted "the State Treasurer or the issuing municipality, as the case may be" for "the issuing municipality" in subdivision (3).

The 1985 amendment, effective May 28, 1985, designated the first paragraph with its subdivisions (1) through (3) as subsection (a) and added new subsection (b).

§ 159-91. Lien of revenue bonds.

(a) All revenue bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution or delivery, in accordance with the provisions of this Article and of the bond order; except that the State or a municipality may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

(b) Any pledge made by the State or a municipality pursuant to this Article shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities, and other moneys so pledged and then held or thereafter received by the State or a municipality, as the case may be, or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the State or a municipality, as the case may be, without regard to whether such parties have notice thereof. The bond order by which a pledge is created need not be filed or recorded in any manner other than as provided in this Chapter. (1971, c. 780, s. 1; 1983, c. 554, s. 12.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, designated the existing language as subsections (a) and (b); in subsection (a) inserted "the State or"; and in subsection (b) inserted "the State or" in the first sentence and "State or a" and "as the case may be" in two places in the second sentence, and substituted "Chapter" for "Subchapter" at the end of the third sentence.

§ 159-92. Status of revenue bonds under Uniform Commercial Code.

Whether or not the revenue bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all revenue bonds represented by instruments and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1971, c. 780, s. 1; 1983, c. 322, s. 3.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, inserted "represented by instruments" following "all revenue bonds."

§ 159-93. Agreement of the State.

The State of North Carolina does pledge to and agree with the holders of any revenue bonds or revenue bond anticipation notes heretofore or hereafter issued by the State or any municipality in this State that so long as any such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the State or the municipality at the time of issuance of the bonds or notes to establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, and other charges for the use, services, facilities, and commodities of or furnished by the revenue bond project in connection with which the bonds or notes, or bonds or notes refunded by the bonds or notes, were issued as shall produce revenues at least sufficient with other available funds to meet the expense of maintenance and operation of and renewal and replacements to such project, including reserves therefor, to pay when due the principal, interest, and redemption premiums (if any) of the bonds or notes, and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in

connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1971, c. 780, s. 1; 1973, c. 494, s. 20; 1983, c. 554, s. 13.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, inserted "the State or" in two places near the beginning of this section.

§ 159-94. Limited liability.

Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues. (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3; 1971, c. 780, s. 1; 1983, c. 554, s. 14.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circum-

stances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, rewrote this section so as to insert references to the State throughout. The act also amended the section catchline.

§ 159-95. Approval of State agencies.

The general design and plan of any revenue bond project undertaken for water systems or facilities or sewage disposal systems or facilities shall be subject to the approval of the Commission for Health Services or the State Environmental Management Commission to the same extent that such projects would be if they were not financed by revenue bonds, and the provisions of the revenue bond order shall be consistent with any requirements imposed on the project by the Commission for Health Services or the State Environmental Management Commission. No revenue bond project for the acquisition or construction of systems or facilities for the generation, production, or transmission of gas or electric power may be undertaken by the State or a municipality unless the State or municipality, as the case may be, shall first obtain a certificate of convenience and necessity from the North Carolina Utilities Commission. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081; 1967, c. 555; 1969, c. 688, s. 2; 1971, c. 780, s. 1; 1973, c. 476, s. 128; c. 494, s. 21; c. 1262, s. 23; 1983, c. 554, s. 15.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, substituted "the State or a municipality unless the State or municipality, as the case may be" for "the municipality unless the municipality" in the second sentence. The act also amended the section catchline.

§ 159-96. Limitation on extraterritorial operation of enterprises financed by revenue bonds.

Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when oper-

ated primarily for the municipality's own use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality where the municipality finds that the system, facilities or equipment so financed would benefit the municipality.

A revenue bond project financed wholly or partially by revenue bonds of the State may be located either within or without the State and, when operated primarily for the State's own use and for users within the State, may be operated incidentally for users outside the State. (1971, c. 780, s. 1; 1973, c. 1325; 1983, c. 554, s. 16; c. 795, s. 5.)

Editor's Note. — Session Laws 1983, c. 554, which added the second paragraph, provides in ss. 21 through 25:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Session Laws 1983, c. 795, which rewrote the last sentence in the first paragraph, provides in s. 7: "Sections 5 and 6 of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing."

Session Laws 1983, c. 795, s. 8, contains a severability clause.

Effect of Amendments. — Session Laws 1983, c. 554, s. 16, effective June 17, 1983, added the second paragraph.

Session Laws 1983, c. 795, s. 5, effective July 18, 1983, rewrote the last sentence in the first paragraph.

§ 159-97. Taxes for supplementing revenue bond projects.

(g) For the purposes of this section,

(1) A "revenue bond project" is limited, notwithstanding the provisions of G.S. 159-81, to (i) aeronautical facilities, including but not limited to airports, terminals and hangars, (ii) hospitals and other health-related facilities, and (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste within the meaning of said G.S. 159-81;

(2) An "operating supplement requirement" occurs when, as set forth in the budget prepared by the issuing municipality in respect of the revenue bond project, the estimated cost in the next succeeding fiscal year of the (i) current operating expenses of the revenue bond project, (ii) amount required to maintain the debt service reserve by repaying

any withdrawals therefrom in respect of all outstanding bonds issued in connection with the revenue bond project, and (iii) debt service on all outstanding bonds issued in connection with the revenue bond project, are in excess of the pledged revenues of the revenue bond project for such fiscal year as estimated by the issuing municipality, excluding taxes levied pursuant to this section; provided, however, that the amount of the operating supplement requirement shall not exceed the total amount of the current operating expenses of the revenue bond project mentioned in clause (i) above, and

(3) A "debt service reserve supplement requirement" occurs when there have been withdrawn from the debt service reserve any moneys for the purpose of paying debt service on the bonds in respect of which the supplemental tax has been authorized by the voters; provided, however, that the amount of the debt service reserve supplement requirement shall not exceed the amount so withdrawn.

(1973, c. 786, s. 1; 1979, c. 727, s. 5; 1983, c. 795, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 795, s. 7, provides: "Sections 5 and 6 of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing."

Session Laws 1983, c. 795, s. 8, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective July 18, 1983, deleted "and" preceding "(ii)" and inserted "and (iii) systems, facilities and equipment for the collection, treatment or disposal of solid waste" in subdivision (1) of subsection (g).

Article 7.

Issuance and Sale of Bonds.

§ 159-120. Definitions.

As used in this Article, unless the context clearly requires another meaning, the words "unit" or "issuing unit" mean "unit of local government" as defined in G.S. 159-44, "municipality" as defined in G.S. 159-81, and the State of North Carolina, and the words "governing body," when used with respect to the State of North Carolina, mean the Council of State. (1973, c. 494, s. 30; 1981 (Reg. Sess., 1982), c. 1276, s. 3; 1983, c. 554, s. 17.)

Editor's Note. —

Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall

not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, s. 554, c. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, deleted "and" following "G.S. 159-44" and inserted the language "and the State of North Carolina, and the words 'governing body', when used with respect to the State of North Carolina, mean the Council of State." The act also amended the section catchline.

§ 159-123. Sale of bonds by sealed bids; private sales.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1981 (Reg. Sess., 1982), c. 1276, s. 5; 1985, c. 723, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 12, 1985, added subsections (e) and (f).

§ 159-128. Makeup and formal execution of bonds; temporary bonds.

The governing board of the issuing unit shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto. The board may also provide for the authentication of the bonds by a trustee or fiscal agent. The board may authorize the use of facsimile signatures and seals on the bonds and coupons, if any, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each bond that is represented by an instrument. Delivery of bonds executed in accordance with the board's determination shall be valid notwithstanding any change in officers or in the seal of the issuing unit occurring after the original execution of the bonds.

Before definitive bonds are prepared, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when they have been executed and are available for delivery. (1917, c. 138, s. 28; 1919, c. 178, s. 3(28); C.S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 35; 1969, c. 29; 1971, c. 780, s. 1; 1983, c. 322, s. 4.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, deleted "must appear on each bond" following "at least one manual signature" near the middle of the third sentence of the first paragraph and inserted "must appear on each bond that is represented by an instrument" at the end of that sentence.

§ 159-129. Obligations of units certified by Commission.

Each bond or bond anticipation note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the bond or note has been approved under the provisions of The Local Government Bond Act of The Local Government Revenue Bond Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each bond or bond anticipation note that is not represented by an instrument shall be evidenced by a writing relating to such obligation, which writing shall identify such obligation or the issue of which it is part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Subchapter have been observed, and no bond or note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid. (1931, c. 60, s. 22; c. 296, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 24; 1981 (Reg. Sess., 1982), c. 1276, s. 7; 1983, c. 322, s. 5.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, rewrote this section.

§ 159-134. Fiscal agents.

An issuing unit may employ a bank or trust company either within or without this State as fiscal agent for the payment of installments of principal and interest on the bonds, and for the destruction of paid or cancelled bonds and coupons, and may pay reasonable fees for this service not in excess of maximum rates to be fixed by regulation of the Commission. If an issuing unit employs another person as such fiscal agent or any other person for other services pursuant to the Registered Public Obligations Act of North Carolina, then it may pay reasonable fees for such services not in excess of maximum rates to be fixed by regulation of the Commission. (1971, c. 780, s. 1; 1983, c. 322, s. 6.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, added the second sentence.

§ 159-139. Destruction of cancelled bonds, notes, and coupons.

All cancelled bonds, notes, and interest coupons of a unit may be destroyed in one of the following ways, in the discretion of the governing board:

(1) Method 1. — The finance officer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes, and coupons, showing

a. With respect to bonds and notes, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After this entry has been made, the paid bonds, notes, and coupons shall be destroyed by either burning or shredding, in the presence of the mayor or chairman of the governing board, the finance officer, the unit's attorney, and the clerk to the governing board, or any three of them, each of whom shall certify under his hand in the book kept by the finance officer that he saw the bonds and coupons destroyed. Cancelled bonds, notes, or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. — The governing board may contract with the bank, trust company or other person acting as fiscal agent for a bond issue for the destruction of bonds and interest coupons which have been cancelled by the fiscal agent. The contract shall require that the fiscal agent give the unit a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the finance officer's office. Cancelled bonds or coupons shall not be destroyed until one year from the date of payment.

The provisions of G.S. 121-5 and 132-3 shall not apply to paid bonds, notes, and coupons. The information required to be entered in a substantially bound book prior to destruction under either Method 1 or Method 2 may as an alternative, be shown by photocopying, microfilming or other similar method of recording the information by directly reproducing the cancelled documents. (1941, cc. 203, 293; 1961, c. 663, ss. 1, 2; 1963, c. 1173, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 29; 1983, c. 322, ss. 7, 8.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, substituted "bank, trust company or other person" for "bank or trust company" in the first sentence of subdivision (2) and inserted the last sentence of the section.

§ 159-141. Terms and conditions of sale.

Notwithstanding the foregoing, any bond of the State may be sold upon such terms and conditions, at such interest rate or rates, for such price and in such manner, either public or private, as the State Treasurer shall determine. (1983, c. 554, s. 18.)

Editor's Note. — Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circum-

stances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes this section effective upon ratification. The act was ratified June 17, 1983.

Article 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. Definitions.

As used in this Part, the words "unit" or "issuing unit" means "unit of local government" as defined in G.S. 159-44, "municipality" as defined in G.S. 159-81, and the State of North Carolina. (1973, c. 494, s. 36; 1981 (Reg. Sess., 1982), c. 1276, s. 9; 1983, c. 554, s. 19.)

Editor's Note. —

Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, rewrote this section so as to include reference to the State of North Carolina. The act also amended the section catchline.

§ 159-163. Security of revenue bond anticipation notes.

Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of revenue bonds, and no holder of a revenue bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of revenue bonds shall be secured, to the extent and as provided in the resolution authorizing the issuance of such notes, by a pledge, charge, and lien upon the proceeds of the revenue bonds in anticipation of the sale of which such notes are issued and upon the revenues securing such revenue bonds; provided, however, that such notes shall be payable as to both principal and interest from such revenues if not paid from the proceeds of such revenue bonds or

otherwise paid. The provisions of G.S. 159-90(b) shall apply to revenue bond anticipation notes as well as to revenue bonds. (1971, c. 780, s. 1; 1979, c. 428; 1985, c. 265, s. 2.)

Editor's Note. — Session Laws 1985, c. 265, ss. 3 to 5 provide:

"Sec. 3. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"Sec. 4. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Effect of Amendments. — The 1985 amendment, effective May 28, 1985, rewrote the last sentence, which formerly read, "In addition, the proceeds of each revenue bond issue are hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the sale as the first priority."

§ 159-164. Form of notes to be issued.

Bond anticipation loans shall be evidenced by negotiable notes in bearer form or by certificated or uncertificated registered public obligations pursuant to the Registered Public Obligations Act. Such notes and certificated registered public obligations are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond anticipation notes by resolution which shall fix the maximum aggregate principal amount of the notes and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 34; 1983, c. 322, s. 9.)

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, rewrote the first sentence. The act also amended the section catchline.

§ 159-165. Sale and delivery of bond anticipation notes.

(a) Bond anticipation notes of a municipality shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 35; 1981 (Reg. Sess., 1982), c. 1276, s. 11; 1983, c. 554, s. 20.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1983, c. 554, ss. 21 through 25, provide as follows:

"Sec. 21. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers not existing; provided, however, that the issuance of bonds and notes under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

"Sec. 22. This act, being necessary for the health and welfare of the people of the State shall be liberally construed to effect the purposes thereof.

"Sec. 23. Insofar as the provisions of this act are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this act shall be controlling.

"Sec. 24. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act.

"Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Session Laws 1983, c. 554, s. 26, makes the act effective upon ratification. The act was ratified June 17, 1983.

Effect of Amendments. — The 1983 amendment, effective June 17, 1983, inserted "of a municipality" in the first sentence of subsection (a) and added the second sentence of that subsection.

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-172. Authorization and issuance of notes.

(a) Notes issued under this Part shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. Notes that are represented by instruments shall be signed with the manual or facsimile signatures of the officers designated by the government board for that purpose, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each note that is represented by an instrument. Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(c) Notes issued under this Part shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Each such note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the note has been approved under the provisions of The Local Government Finance Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each note that is not represented by an instrument shall be evidenced by a writing relating to such note, which writing shall identify such note or the issue of which it is a part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid.

(d) When the notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall also collect from their pur-

chaser the purchase price or proceeds of notes that are not represented by instruments. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 39; 1975, c. 674, ss. 3-5; 1983, c. 322, ss. 10-12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective May 17, 1983, in the third sentence of subsection (a) substituted "Notes that are represented by instruments" for "The notes," substituted "the government board" for "the governing board," deleted "must appear on each note" following "at least one manual signature," and inserted "must appear on each note that is represented by an instrument" at the end of the sentence; in subsection (c), rewrote the former second and third sentences as the present second through fifth sentences; and in subsection (d), inserted the present second sentence.

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

Article 1.

Short Title, Legislative Findings and Definitions.

Editor's Note. — Session Laws 1983, c. 609, reorganizes and amends Chapter 159B. Section 1 of the act divides Chapter 159B into Articles 1 through 4.

---

§ 159B-2. Legislative findings and purposes.

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation

and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants.

In addition to the authority granted municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities by Article 2 of this Chapter and the other powers granted in said Article 2, and in addition and supplemental to powers otherwise conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable for the State of North Carolina to authorize municipalities to form joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems and in such other ways as hereinafter provided. In order to provide maximum economies and efficiencies to municipalities and the consuming public in the generation and transmission of electric power and energy contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more municipalities, as requested, with respect to the construction, ownership, maintenance, expansion and operation of their electric systems. (1975, c. 186, s. 1; 1983, c. 609, s. 2.)

Editor's Note. — Session Laws 1983, c. 609, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 24, 1983, added the last paragraph.

§ 159B-3. Definitions.

The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

(2) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency (provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load); establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation.

(2a) "Electric system" shall mean any electric power generation, transmission or distribution system.

(3) "Governing board" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality, joint agency, or joint municipal assistance agency.

(4) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 2 of this Chapter.

(4a) "Joint municipal assistance agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 3 of this Chapter.

(1975, c. 186, s. 1; 1977, c. 708, s. 2; 1983, c. 609, ss. 3-6; 1985, c. 266, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983, c. 609, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 24, 1983, substituted "municipality, joint agency, or joint municipal assistance agency" for "municipality or joint agency" at the end of subdivision (3), inserted "Article 2 of" preceding "this Chapter" at the end of subdivision (4), and added subdivisions (2a) and (4a).

The 1985 amendment, effective May 28, 1985, inserted "(provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load)" near the end of subdivision (2).

Article 2.

Joint Agencies; Municipalities.

Editor's Note. — Session Laws 1983, c. 609, reorganizes and amends Chapter 159B. Section 1 of the act divides Chapter 159B into Articles 1 through 4.

---

§ 159B-4. Authority of municipalities to jointly cooperate.

In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may jointly or severally plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain a project situated within or without the State with one or more other municipalities in this State owning electric distribution facilities or any political subdivisions, agencies or instrumentalities of any state contiguous to this State or joint agencies created pursuant to this Chapter or any persons, firms, associations or corporations, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within the State or any state contiguous to the State, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate.

Prior to acquiring any such project the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24. In determining the future power requirements of a municipality, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;
(2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
(3) The estimated useful life of such project;
(4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
(5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a project unless a party to the proceeding aggrieved by the

determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, s. 2; 1983, c. 574, s. 1.)

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, rewrote the first paragraph, and in the first sentence of the second paragraph substituted "any such project" for "any such undivided interest" and "shall not acquire a project" for "shall not acquire an undivided interest as a tenant in common in a project" and deleted "of this Chapter" at the end of that sentence.

§ 159B-5. Joint ownership of a project; provisions of the contract or agreement with respect thereto.

Each municipality shall own a project in proportion to the amount of the money furnished or the value of property or other consideration supplied by it for the planning, development, acquisition or construction thereof, and shall be entitled to a percentage share of the output and capacity therefrom equal to such ownership proportion in such project.

Each municipality shall be severally liable for its own acts and not jointly or severally liable for the acts, omissions or obligations of others, and no money or property or other consideration supplied by any municipality shall be credited or otherwise applied to the account of any other municipality, nor shall the share of any municipality in a project be charged directly or indirectly with any debt or obligation of any other municipality or be subject to any lien as a result thereof. The acquisition of a project shall include, but shall not be limited to, the purchase or lease of an existing, completed project and the purchase of a project under construction. A municipality participating in the joint or several planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation or maintenance of any project under this Chapter may furnish money derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both, and provide property, both real and personal, services and other considerations.

Any contracts entered into by municipalities with respect to ownership in a project shall contain such terms, conditions and provisions, not inconsistent with the provisions hereof, as the governing boards of the municipalities shall deem to be in the interests of the municipalities. Any such contracts shall be ratified by resolution of the governing board of each municipality spread upon its minutes. Any such contracts shall include, but shall not be limited to, the following:

(1) The purpose or purposes of the contract;
(2) The duration of the contract;
(3) The manner of appointing or employing the personnel necessary in connection with the project;
(4) The method of financing the project, including the apportionment of costs and revenues;
(5) Provisions specifying the ownership interests of the parties in real property used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated or when the project, for any reason, is abandoned, decommissioned or dismantled;

(6) Provisions relating to alienation and prohibiting partition of a municipality's interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition;

(7) Provisions for the construction of a project, which may include the determination that one participating municipality or any person, firm or corporation may construct the project as agent for all the parties;

(8) Provisions for the operation and maintenance of a project, which may include the determination that one participating municipality or any person, firm or corporation may operate and maintain the project as agent for all the parties;

(9) Provisions for the creation of a committee of representatives of the participating municipalities with such powers of supervision of the construction and operation of the project as the contract, not inconsistent with the provisions of this Chapter, may provide;

(10) Provisions that if one or more of the municipalities shall default in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of such defaulting party or parties and may succeed to such rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract;

(11) Methods for amending the contract;

(12) Methods for terminating the contract; and

(13) Any other necessary or proper matter.

For the purpose of paying its respective share of the cost of a project or projects, a municipality may issue its bonds as provided in this Chapter, and, notwithstanding the provisions of any other law to the contrary, may secure the payment of the principal of, premium, if any, and interest on such bonds by a lien and charge on all, or any portion of, the revenue derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission, or distribution of electric power or energy or its interests in any project or projects, or a combination of such revenues. Provided that all bonds issued under the provisions of this Chapter shall be authorized and issued by the governing board of a city, town, or other unit of municipal government created under the laws of the State.

In connection with any project undertaken pursuant to this Chapter, a municipality shall have all of the rights and powers granted to a joint agency by subdivisions (12) and (13) of G.S. 159B-11.

Notwithstanding the provisions of any other law to the contrary, any contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided. (1975, c. 186, s. 1; 1983, c. 574, ss. 2-2.6.)

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, substituted "shall own a project" for "shall own an undivided interest in any project" and "equal to such ownership proportion in such project" for "equal to such undivided interest" in the first paragraph; in the second paragraph deleted "undivided" preceding "share of any municipality in a project" in the first sentence and inserted "or several" preceding "planning, fi-

nancing, construction" in the third sentence; in the third paragraph deleted "joint" preceding "ownership in a project" in the first sentence, in subdivision (6) deleted "undivided" preceding "interest in a project," in subdivision (7) substituted "one participating municipality" for "one municipality jointly participating," in subdivision (8) substituted "one participating municipality" for "one municipality jointly participating," and in subdivision (9) substituted "participating municipalities" for "municipalities jointly participating"; in the first sentence of the fourth paragraph substituted "may secure the payment of the principal of, premium, if any, and interest on such bonds by a lien and charge on all, or any portion of, the revenue" for "may pledge to the payment of the principal of, premium, if any, and interest on such bonds the revenues, or any portion thereof" and deleted "joint" preceding "project or projects"; and added the last two paragraphs.

§ 159B-9. Creation of a joint agency; board of commissioners.

(c) The joint agency shall consist of a board of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing body by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9. The offices of commissioner, alternate commissioner, or officer of a joint agency are hereby declared to be offices which may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute.

(1975, c. 186, s. 1; 1977, c. 385, ss. 3, 4; 1979, c. 102; 1983, c. 574, s. 3; 1985, c. 243, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, added the last sentence of subsection (c).

The 1985 amendment, effective May 23, 1985, rewrote the fifth sentence of subsection (c), which formerly read "The governing boards of the municipalities may appoint one alternate commissioner to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof."

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined:

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards.

(9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;

(11) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, or of the United States;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fab-

rication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or otherwise an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(15) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, corporations and others;

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, under-

writers and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to the same, to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners of the joint agency shall determine;

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency therein.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;

(2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;

(3) The estimated useful life of such project;

(4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;

(5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, ss. 6-10; 1983, c. 574, ss. 4, 4.1; 1985, c. 212, s. 1; c. 723, s. 3.)

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, rewrote subdivision (3) of the first paragraph, which read "To maintain an office at such place or places as it may determine," and in subdivision (19a) of the first paragraph substituted the language beginning "and services and facilities relating" and ending "with respect to the same" for "related services from any source on behalf of its members and other customers and to sell the same."

The 1985 amendment by c. 212, s. 1, effective May 21, 1985, rewrote subdivision (8), which read "To pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards."

The 1985 amendment by c. 723, s. 3, effective July 12, 1985, inserted the language beginning "and to select and retain subject to approval of the Local Government Commission" and ending "with regard to which the services were performed" near the end of subdivision (19).

§ 159B-12. Sale of capacity and output by a joint agency.

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy for its present or future requirements, including the capacity and output of one of more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation. Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project, or of any contracts with respect to the purchase or disposition of power and energy and services and facilities related to the utilization of power and energy, shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided.

Payments by a municipality under any contract for the purchase of capacity, output, or power or energy or services and facilities related to the utilization of power and energy, from a joint agency shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing

power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency. (1975, c. 186, s. 1; 1983, c. 574, s. 5.)

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, divided the former single sentence of the second paragraph into the present first and second sentences thereof and in the present second sentence substituted the language beginning "Notwithstanding the provisions" and ending "related to the utilization of power and energy" for "and the execution and effectiveness thereof," and near the beginning of the first sentence of the third paragraph substituted "output, or power or energy or services and facilities related to the utilization of power and energy" for "and output."

§ 159B-14. Bonds of a joint agency.

A joint agency may issue its bonds pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or contributions or advances from its members. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes. (1975, c. 186, s. 1; 1983, c. 574, s. 6.)

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, inserted "or from the sale of power and energy and services and facilities related to the utilization of power and energy" in the first sentence.

§ 159B-15. Issuance of bonds.

(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds of each issue shall bear

interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the issuer, provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and subsequently resold in accordance with the provisions of this Chapter.

(a1) Notwithstanding anything in this Chapter to the contrary, in the case of short-term notes or other obligations (including commercial paper) maturing not later than one year from their date or dates, the Local Government Commission of North Carolina and the issuer (i) may authorize officers or employees of either or both thereof to fix principal amounts, maturity dates, interest rates or methods of fixing interest rates, interest payment dates, denominations, redemption rights of the issuer or holder, places of payment of principal and interest, and purchase prices of any such notes or other obligations, to sell and deliver any such notes in whole or in part at one time or from time to time, and to fix other matters and procedures necessary to complete the transactions authorized, all subject to such limitations as may be prescribed by the Local Government Commission with the approval of the issuer, (ii) may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase notes or other obligations and any other transactions to provide security to assure, timely payment of notes or other obligations, (iii) may employ one or more persons or firms to assist in the sale of the notes or other obligations and appoint one or more banks, trust companies or any dealer in notes or other obligations, within or without the State, as depositary for safekeeping and as agent for the delivery and payment of the notes or other obligations, and (iv) may provide for the payment of fees and expenses in connection with the foregoing either from the proceeds of the notes or other obligations or from other available funds.

(1975, c. 186, s. 1; 1983, c. 574, ss. 7, 7.1; 1985, c. 266, ss. 2, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, inserted "appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent" at the end of the seventh sentence of subsection (a) and added subsection (a1).

The 1985 amendment, effective May 28, 1985, added "provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate" at the end of the third sentence of subsection (a) and added the last sentence of that subsection.

§ 159B-16. Resolution or trust agreement.

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, financed by the bonds, or from the electric system or facilities of a municipality or a joint agency.

(1975, c. 186, s. 1; 1983, c. 574, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, inserted "or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, financed by the bonds" in subdivision (1).

§ 159B-17. Revenues.

(b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects or otherwise as authorized by this Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

(c) Any pledge of revenues, securities or other moneys made by a municipality or joint agency pursuant to this Chapter shall be valid and binding

from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality or joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge of revenues, securities or other moneys is created need not be filed or recorded in any manner. (1975, c. 186, s. 1; 1983, c. 574, s. 9; 1985, c. 212, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. — The 1983 amendment, effective June 21, 1983, added "or otherwise as authorized by this Chapter" at the end of the first sentence of subsection (b).

The 1985 amendment, effective May 21, 1985, inserted "of revenues, securities or other moneys" in the first and last sentences of subsection (c).

§ 159B-27. Taxes; payments in lieu of taxes.

(a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Any administrative building and associated land shall be deemed a project for purposes of this paragraph.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to three and twenty-two hundredths percent (3.22%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be.

(1973, c. 476, s. 193; 1975, c. 186, s. 1; 1977, c. 385, s. 12; 1981, c. 487; 1983, c. 574, s. 10; 1983 (Reg. Sess., 1984), c. 1097, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983, c. 574, s. 11, contains a severability clause.

Effect of Amendments. —

The 1983 amendment, effective June 21, 1983, added the last sentence of subsection (a).

The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, and applicable to gross receipts earned from services and commodities provided on or after that date and to sales of electricity, piped natural gas, or telephone service on or after that date, substituted "three and twenty-two hundredths percent (3.22%)" for "six percent (6%)" near the beginning of subsection (b), rewrote subsection (c), and in subsection (d) substituted "three and nine hundredths percent (3.09%)" for "three percent (3%)" in two places.

§ 159B-34. Liability and defense.

(a) No commissioner or officer of any joint agency or municipality or person or persons acting in their behalf[,] while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter.

(b) The board of commissioners of a joint agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, officer, agent, or employee of the joint agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(c) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or in the scope and course of his current or former employment or duty as a commissioner, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, officers, agents or employees if the board of commissioners finds that commissioner, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint agency may purchase insurance coverage for payment of claims or judgments pursuant to this section. (1975, c. 186, s. 1; 1985, c. 225, s. 1.)

Effect of Amendments. — The 1985 amendment, effective May 23, 1985, rewrote this section, which formerly read "No commissioner of any joint agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter."

§ 159B-36: Recodified as § 159B-52 by Session Laws 1983, c. 609, s. 8, effective June 24, 1983.

§ 159B-37. Actions relating to bonds or to security for bonds.

Notwithstanding the general provisions concerning venue contained in Chapter 1, Subchapter IV, Article 7, or elsewhere in the General Statutes, any action or proceeding by or against a municipality or a joint agency that concerns or relates to (a) any bonds issued pursuant to this Chapter, (b) any contract or document the revenues from which secure in whole or in part the payment of said bonds or (c) any other security or source for payment of said bonds must be tried in the Superior Court of Wake County. (1985, c. 414, s. 1.)

Editor's Note. — Session Laws 1985, c. 414, s. 2 makes this section effective upon ratification. The act was ratified June 17, 1985.

§§ 159B-38 to 159B-41: Reserved for future codification purposes.

Article 3.

Joint Municipal Assistance Agencies.

Editor's Note. — Session Laws 1983, c. 609, reorganizes and amends Chapter 159B. Section 1 of the act divides Chapter 159B into Articles 1 through 4.

---

§ 159B-42. Joint municipal assistance agencies.

The purpose of this Article is to authorize municipalities to form one or more joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, to do such other acts and things as hereinafter provided and to carry out the powers and responsibilities hereinafter granted in this Chapter. It shall also be the purpose of a joint municipal assistance agency to provide aid and assistance to any joint agency in the exercise of its respective powers and functions. The term "provide aid and assistance" shall be liberally construed. (1983, c. 609, s. 7.)

Editor's Note. — Session Laws 1983, c. 609, s. 12, makes this Article effective upon ratification. The act was ratified June 12, 1983.

Session Laws 1983, c. 609, s. 11, contains a severability clause.

§ 159B-43. Joint municipal assistance agencies authorized.

(a) Any two or more municipalities may organize a joint municipal assistance agency, which shall be a public body and body corporate and politic. Any municipality is hereby authorized to become a member of any such joint municipal assistance agency upon a determination, by resolution or ordinance of its governing board, that economies, efficiencies and other benefits might be achieved from participation in such an agency.

The resolution or ordinance determining it desirable for a municipality to become a member of a joint municipal assistance agency (which need not

prescribe in detail the basis for the determination) shall set forth the names of the municipalities which are proposed to be initial members of the joint municipal assistance agency. The governing board of the municipality shall thereupon by ordinace or resolution appoint one commissioner and up to two alternate commissioners of the joint municipal assistance agency who may, at the discretion of the governing board, be an officer or employee of the municipality. If two alternate commissioners are appointed, the governing board shall designate them as first or second alternate commissioner.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint municipal assistance agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint municipal assistance agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint municipal asisstance agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint municipal assistance agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint municipal assistance agency, the joint municipal assistance agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate or of any new or supplemental certificate hereinafter provided for, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 60 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint municipal assistance agency. As soon as practicable after the expiration of such 60-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint municipal assistance agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(b) After the creation of a joint municipal assistance agency, any other municipality may become a member thereof upon application to such joint municipal assistance agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed above for the original members and authorizing said municipality to become a member and appointing a commissioner, and with the consent of a majority of the board of commissioners of the joint municipal assistance agency. Any municipality may withdraw from a joint municipal assistance agency, provided, however, that all obligations incurred by a municipality while it was a member shall remain in full force and effect. Notice that a municipality has been added to or withdrawn from membership in the joint municipal assistance agency shall be filed with the Secretary of State, and the Secretary of State shall thereupon issue a new or supplemental certificate of incorporation setting forth the names of all members of the joint municipal assistance agency. Additions of new members or withdrawal of members shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(c) The joint municipal assistance agency shall be governed by a board of commissioners appointed as provided in subsection (a) above by the respective governing boards of the municipalities which are members of the joint municipal assistance agency. It shall not be necessary to notify the Secretary of State of the appointment of any commissioners following the notifications referred to in subsections (a) and (b) above. Each commissioner shall have one vote and shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner representing such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, other than such commissioner's position as an officer, director or member of the executive committee. All powers, functions, rights and privileges of the joint municipal assistance agency shall be exercised or delegated by the board of commissioners.

(d) The board of commissioners of the joint municipal assistance agency shall annually elect one of the commissioners as president, another as vice president, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary or secretaries and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or any assistant secretary. The board of commissioners may also appoint and prescribe the duties of such additional officers as it deems necessary. The secretary or any assistant secretary of the joint municipal assistance agency shall keep a record of the proceedings of the joint municipal assistance agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint municipal assistance agency, the minute book or journal of the joint municipal assistance agency and its official seal. Either the secretary or any assistant secretary of the joint

municipal assistance agency may cause copies to be made of all minutes and other records and documents of the joint municipal assistance agency and may give certificates under the official seal of the joint municipal assistance agency to the effect that such copies are true copies, and all persons dealing with the joint municipal assistance agency may rely upon such certificates.

(e) Fifty-one percent (51%) of the commissioners of a joint municipal assistance agency then in office shall constitute a quorum, and the commissioners may by written consent executed before or after any meeting waive notice and all other formalities incident to the calling or conduct of the same. Meetings of the commissioners may be held at any place within the State or any state contiguous to the State. A vacancy in the board of commissioners of the joint municipal assistance agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint municipal assistance agency. Any action taken by the joint municipal assistance agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. Except as specifically provided by the bylaws, a majority of the votes of the commissioners present shall be necessary and sufficient to take any action or to pass any resolution.

(f) The board of commissioners of the joint municipal assistance agency may, in its bylaws, provide for a board of directors of the joint municipal assistance agency to be selected from the commissioners and alternate commissioners. The board of directors shall have and exercise such of the powers and authority of the board of commissioners during the intervals between the board of commissioners' meetings as shall be prescribed in the bylaws, rules, motions and resolutions of the board of commissioners. The terms of office of the members of the board of directors and the method of filling vacancies therein shall be fixed by the bylaws of the board of commissioners of the joint municipal assistance agency. The bylaws of the joint municipal assistance agency shall provide that the officers of the board of commissioners elected pursuant to subsection (d) of this section must also serve on the board of directors and hold the same offices thereon.

(g) The board of commissioners may also provide, in its bylaws or otherwise, that the board of directors shall create an executive committee of the board of directors composed of the officers of the board of directors, together with such other members of the board of directors as may be prescribed and that such executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between that board's meetings as shall be prescribed in the bylaws of the joint municipal assistance agency or in the rules or resolutions of the board of directors.

(h) The board of commissioners, board of directors and executive committee may provide or adopt methods and procedures consistent with other applicable laws for the calling or conducting of meetings or the taking of any action.

(i) No commissioner or director of a joint municipal assistance agency shall receive any compensation for the performance of his or her duties hereunder, provided, however, that each commissioner and director may be paid his or her necessary expenses incurred while engaged in the performance of such duties. (1983, c. 609, s. 7; 1985, c. 243, ss. 2, 3.)

Effect of Amendments. — The 1985 amendment, effective May 23, 1985, substituted "up to two alternate commissioners" for "one alternate commissioner" in the second sentence of the second paragraph of subsection (a), added the third sentence of the second paragraph of subsection (a), and rewrote the fifth sentence of subsection (c), which read "The governing boards of the municipalities may appoint one alternate commissioner to act

in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof."

§ 159B-44. General powers of joint municipal assistance agencies and municipalities.

Each joint municipal assistance agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To establish and from time to time modify a schedule of dues and assessments and to provide that the payment thereof when due shall be prerequisite to voting at any meeting and participation in and enjoyment of rights or benefits of the joint municipal assistance agency;

(2) To appropriate for the purposes of the joint municipal assistance agency the funds derived from dues and assessments, and from any other source;

(3) To provide aid and assistance to any one or more municipalities, and to act for or on behalf of any one or more municipalities, in any activity related to the construction, ownership, maintenance, expansion or operation of an electric system, upon such terms, conditions and considerations as may be agreed to between the municipalities and the joint municipal assistance agency;

(4) To provide aid and assistance to any one or more joint agencies, and to act for or on behalf of any one or more joint agencies in the exercise of any power, function, right, privilege or immunity granted by Article 2 of this Chapter, upon such terms, conditions and considerations as may be agreed to between the joint agency and the joint municipal assistance agency;

(5) To provide property and services to any one or more municipalities or joint agencies upon such terms, conditions and considerations as may be agreed to between the municipalities or joint agency and the joint municipal assistance agency;

(6) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(7) To adopt an official seal and alter the same at pleasure;

(8) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned together with any joint agency or agencies, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(9) To sue and be sued in its own name, and to plead and be impleaded;

(10) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(11) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(12) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein; provided, however, that property acquired by a joint municipal assistance agency from a municipality without consideration or for a consideration other than the fair market value thereof as determined by the governing board of the munic-

ipality may only be disposed of in accordance with the procedures set forth in Article 12 of Chapter 160A of the General Statutes;

(13) To make and execute contracts for a period not exceeding three years and other instruments necessary or convenient in the exercise of the powers and functions of the joint municipal assistance agency, including contracts with municipalities, joint agencies, persons, firms, corporations and others, provided, however, that such contracts shall not unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems;

(14) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint municipal assistance agency and to fix and pay their compensation from funds available to the joint municipal assistance agency therefor; and

(15) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint municipal assistance agency herein.

Any municipality or joint agency is authorized to appropriate and pay funds to a joint municipal assistance agency and to enter into contracts or arrangements with a joint municipal assistance agency for the purposes and in the execution of the functions and powers of the municipality or joint agency.

Joint municipal assistance agencies shall comply with Article 8 of Chapter 143 of the General Statutes respecting acquisition or construction of property to the same extent required of municipalities; provided, however, that Article 8 of Chapter 143 of the General Statutes shall not apply to a municipality, joint municipal assistance agency or joint agency in transactions between a joint municipal assistance agency and a municipality or joint agency involving the transfer or construction of property.

Property owned by a joint municipal assistance agency or jointly owned by municipalities or joint agencies and joint municipal assistance agencies shall be exempt from property taxes; provided, however, that each joint municipal assistance agency shall, in lieu of property taxes, pay to any governmental agency authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of such agency if such property were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. (1983, c. 609, s. 7.)

§ 159B-45. Dissolution.

Whenever the governing board of a joint municipal assistance agency and the governing boards of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint municipal assistance agency was formed have been substantially fulfilled and that all obligations incurred by the joint municipal assistance agency have been fully paid or satisfied, such governing boards may declare the joint municipal assistance agency be dissolved. On the effective date of such resolution or ordinance, the title to all funds and other property owned by the joint municipal assistance agency at the time of such dissolution shall vest in the members of the joint municipal assistance agency as provided in this Chapter and the bylaws of the joint municipal assistance agency. Notice of such dissolution shall be filed with the Secretary of State. (1983, c. 609, s. 7.)

§ 159B-46. Reports, liability, and personnel.

(a) Each joint municipal assistance agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its members. Each such report shall set forth an operating and financial statement covering the operations of the joint municipal assistance agency during such year. The joint municipal assistance agency shall cause an audit of its books of record and accounts to be made at least once in each year by independent certified public accountants.

(b) No commissioner, alternate commissioner or director or officer of any joint municipal assistance agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of his authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Article.

(c) Each municipality, joint agency and joint municipal assistance agency shall be severally liable for its own acts or omissions and not jointly or severally liable for the acts, omissions, or obligations of others, including other municipalities.

(d) In no event shall any municipality or joint agency be liable or responsible for any acts, omissions or obligations of any joint municipal assistance agency or any of its officers, employees or agents; provided, however, that contracts between the joint municipal assistance agency and one or more municipalities or one or more joint agencies may expressly provide for the imputation of or indemnification for any liability of one party thereto by the other, or for the assumption of any obligation of one party thereto by the other.

(e) Personnel employed or appointed by a municipality and performing services for or on behalf of a joint municipal assistance agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

(f) Personnel employed or appointed by a joint municipal assistance agency shall be qualified for participation in the North Carolina Local Government Employees' Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

(g) The offices of commissioner, alternate commissioner, officer, director and member of the executive committee of a joint municipal assistance agency are hereby declared to be offices which may be held by the holder of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute. (1983, c. 609, s. 7.)

Editor's Note. — References to "workmen's compensation" are now deemed references to "workers' compensation." See § 97-1.1.

§ 159B-47. Defense.

(a) The board of commissioners of a joint municipal assistance agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, director, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, director, officer, agent or employee of the joint municipal assistance agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(b) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, directors, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or any act allegedly done or omission allegedly made in the scope and course of his current or former employment or duty as a commissioner, director, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint municipal assistance agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, directors, officers, agents or employees if the board of commissioners finds that commissioner, director, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint municipal assistance agency may purchase insurance coverage for payment of claims or judgments pursuant to this section. (1985, c. 225, s. 2.)

Editor's Note. — Session Laws 1985, c. 225, s. 3 makes this section effective on ratification. The act was ratified May 23, 1985.

§§ 159B-48 to 159B-51: Reserved for future codification purposes.

Article 4.

Construction.

Editor's Note. — Session Laws 1983, c. 609, reorganizes and amends Chapter 159B. Section 1 of the act divides Chapter 159B into Articles 1 through 4.

---

§ 159B-52. Chapter liberally construed.

In order to effectuate the purposes and policies prescribed in this Chapter the provisions hereof shall be liberally construed. (1975, c. 186, s. 3; 1983, c. 609, s. 8.)

Editor's Note. — This section was formerly § 159B-36. It was recodified as § 159B-52, pursuant to Session Laws 1983, c. 609, s. 8.

Session Laws 1983, c. 609, s. 11, contains a severability clause.

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

§ 159C-1. Short title.

Legal Periodicals. — For article discussing the North Carolina Industrial and Pollution Control Facilities Financing Act, see 61 N.C.L. Rev. 419 (1983).

§ 159C-5. General powers.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(1975, c. 800, s. 1; 1979, c. 109, s. 1; 1985, c. 723, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 12, 1985, added the language beginning "and to select and retain subject to approval of the Local Government Commission" and ending "with regard to which the services were performed" near the end of subdivision (12).

Chapter 159D.

The North Carolina Industrial and Pollution Control Facilities Financing Authority Act.

§ 159D-5. General powers.

The authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(1977, 2nd Sess., c. 1198, s. 1; 1985, c. 723, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 12, 1985, added the language beginning "and to select and retain subject to approval of the Local Government Commission" and ending "with regard to which the services were performed" at the end of subdivision (12).

Chapter 159E.

Registered Public Obligations Act.

§ 159E-1. Short title.

This Chapter may be cited as the "Registered Public Obligations Act." (1983, c. 322, s. 1.)

Editor's Note. — Session Laws 1983, c. 322, s. 13, makes this Chapter effective upon ratification. The act was ratified May 17, 1983.

§ 159E-2. Definitions.

As used in this Chapter, the following terms have the following meanings, unless the context otherwise requires:

(1) "Authorized officer" means any individual required or permitted, alone or with others, by any provision of law or by the issuing public entity, to execute on behalf of the public entity a certificated registered public obligation or a writing relating to an uncertificated registered public obligation.

(2) "Certificated registered public obligation" means a registered public obligation which is represented by an instrument.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Commission" means the Local Government Commission.

(5) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official or official body.

(6) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature.

(7) "Financial intermediary" means a bank, broker, clearing corporation or other person or the custodian for or nominee of any of them which in the ordinary course of its business maintains registered public obligation accounts for its customers, when so acting.

(8) "Issuer" means a public entity which issues an obligation.

(9) "Obligation" means an agreement of a public entity issuer to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement or otherwise, and includes a share, participation, or other interest in any such agreement.

(10) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a registered public obligation.

(11) "Official or official body" means the officer or board that is empowered under the laws applicable to an issuer to provide for original issuance of an obligation of the issuer, by defining the obligation and its terms, conditions and other incidents, the successor or successors of any such official or official body, and such other person or group of persons as shall be assigned duties of such official or official body with respect to a registered public obligation under applicable law from time to time. Unless otherwise provided by law, the State Treasurer shall be the "official" for the issuance of all State obligations.

(12) "Public entity" means any entity, department, or agency which is empowered under the laws of this State, to issue obligations any interest with respect to which may, under any provision of law, be provided an exemption from the income tax referred to in the Code. The term "public entity" may thus include, without limitation, this State, an entity deriving powers from and acting pursuant to the State Constitution or a special legislative act, a political subdivision, a municipal corporation, a State university or college, a special district, a public authority and other similar entities.

(13) "Registered public obligation" means an obligation issued by a public entity pursuant to a system of registration.

(14) "System of registration" and its variants means a plan that provides:

a. With respect to a certificated registered public obligation, that (i) the certificated registered public obligation specify a person entitled to the registered public obligation or the rights it represents, and (ii) transfer of the certificated registered public obligation and the rights it represents may be registered upon books maintained for that purpose by or on behalf of the issuer; and

b. With respect to an uncertificated registered public obligation, that (i) books maintained by or on behalf of the issuer for the purpose of registration of the transfer of a registered public obligation specify a person entitled to the registered public obligation and the rights evidenced thereby, and (ii) transfer of the uncertificated registered public obligation and the rights evidenced thereby be registered upon such books.

(15) "Uncertificated registered public obligation" means a registered public obligation which is not represented by an instrument. (1983, c. 322, s. 1.)

§ 159E-3. Declaration of State interest; purposes.

(a) The Code provides that interest with respect to certain obligations may not be exempt from federal income taxation unless they are in registered form. It is therefore a matter of State concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this Chapter to empower all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of the applicable provisions of the Code.

(b) Obligations have traditionally been issued predominantly in bearer rather than in registered form, and a change from bearer to registered form may affect the relationships, rights and duties of issuers of and the persons that deal with obligations, and by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently depending on their legal and financial charactertistics, their markets and their adaptability to recent and prospective technological and organizational develop-

ments. It is therefore a matter of State concern that public entities be provided flexibility in the development of such systems and control over system incidents, so as to accommodate such differing impacts. It is a purpose of this Chapter to empower the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations. It is further a purpose of this Chapter to authorize systems that will facilitate the prompt and accurate transfer of registered public obligations and the development of practices with regard to the registration and transfer of registered public obligations in order to maintain market acceptance for obligations of public entities. (1983, c. 322, s. 1.)

§ 159E-4. Systems of registration.

(a) Each issuer, with the approval of the Commission, is authorized to establish and maintain a system of registration with respect to each obligation which it issues. The system may either be (i) a system pursuant to which only certificated registered public obligations are issued, or (ii) a system pursuant to which only uncertificated registered public obligations are issued, or (iii) a system pursuant to which both certificated and uncertificated registered public obligations are issued. The issuer may amend, discontinue and reinstitute any system, from time to time, subject to covenants.

(b) The system shall be established, amended, discontinued, or reinstituted, for the issuer by the official or official body.

(c) The system shall be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer which is established by the official or official body.

(d) The system shall define the method or methods by which transfer of the public obligations shall be effective with respect to the issuer, and by which payment of principal and any interest shall be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation, or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, cancelled certificate destruction and other incidental matters. Unless the issuer otherwise provides, the record date for interest payable on the first or fifteenth day of a month shall be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth day of a month, shall be the fifteenth calendar day before the interest payment date.

(e) Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners.

(f) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions of the system and the effect of such on the exemption of interest from the income tax provided for by the Code.

(g) Whenever an issuer shall issue an uncertificated registered public obligation, the system of registration may provide that a true copy of the official actions of the issuer relating to such uncertificated registered public obliga-

tion be maintained by the issuer or by the person, if any, maintaining such system on behalf of the issuer, so long as the uncertificated registered public obligation remains outstanding and unpaid. A copy of such official actions, verified to be such by an authorized officer, shall be admissible before any court of record, administrative body or arbitration panel without further authentication.

(h) Nothing in this Chapter shall preclude a conversion from one of the forms of registered public obligations provided for by this Chapter to a form of obligation not provided for by this Chapter if interest on the obligation so converted will continue to be exempt from the income tax provided for by the Code.

(i) The rights provided by other laws with respect to obligations in forms not provided for by this Chapter shall, to the extent not inconsistent with this Chapter, apply with respect to registered public obligations issued in forms authorized by this Chapter. This includes Subchapter IV of Chapter 159 of the General Statutes and the "State Debt" provisions of Chapter 142 of the General Statutes. (1983, c. 322, s. 1.)

§ 159E-5. Certificated registered public obligations; execution; authentication.

(a) A certificated registered public obligation shall be executed by the issuer by the manual or facsimile signature or signatures of authorized officers. Any signature of an authorized officer may be attested by the manual or facsimile signature of another authorized officer.

(b) In addition to the signatures referred to in (a) of this subsection any certificated registered public obligation or any writing relating to an uncertificated registered public obligation may include a certificate or certificates signed by the manual or facsimile signature of an authenticating agent, registrar, transfer agent or the like. (1983, c. 322, s. 1.)

§ 159E-6. Certificated registered public obligation; signatures.

(a) Any certificated registered public obligation signed by the authorized officers at the time of the signing thereof shall remain valid and binding, notwithstanding that before the issuance thereof any or all of such officers shall have ceased to fill their respective offices.

(b) Any authorized officer empowered to sign any certificated registered public obligation may adopt as and for the signature of such officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated registered public obligation. An unauthorized officer incurs no liability by adoption of a predecessor's signature that would not be incurred by such authorized officer if the signature were that of such authorized officer. (1983, c. 322, s. 1.)

§ 159E-7. Certificated registered public obligation; seal.

When a seal is required or permitted in the execution of any certificated registered public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal. (1983, c. 322, s. 1.)

§ 159E-8. Agents; depositories.

(a) An issuer, with the approval of the Commission, may appoint for such term as may be agreed, including for so long as a registered public obligation may be outstanding, corporate or other authenticating agents, transfer agents, registrars, paying or other agents and specify the terms of their appointment, including their rights, their compensation and duties, limits upon their liabilities and provision for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to the issuer, the owner or a financial intermediary. None of such agents need have an office or do business within this State.

(b) An issuer may agree with financial intermediaries in connection with the establishment and maintenance by others of a depository system for the transfer or pledge of registered public obligations or any interest therein. Any such financial intermediaries may, if qualified and acting as fiduciaries, also serve as authenticating agents, transfer agents, registrars, paying or other agents of the issuer with respect to the same issue of public obligations.

(c) Nothing in this Chapter shall preclude the issuer from itself performing, either alone or jointly with others, any transfer, registration, authentication, payment, depository or other function described in this section. (1983, c. 322, s. 1.)

§ 159E-9. Costs; collection.

(a) An issuer, prior to or at original issuance of registered public obligations, may provide as a part of a system of registration that the transferor or transferee of the registered public obligations pay all or a designated part of the costs of the system as a condition precedent to transfer, that costs be paid out of proceeds of the registered public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid for by the transferor or transferee or out of proceeds shall be the responsibility of the issuer. Moneys for the discharge of this responsibility may be appropriated annually.

(b) The issuer may as a part of the system of registration provide for reimbursement or for satisfaction of its responsibility for costs by others. The issuer may enter into agreements with others respecting such reimbursement or satisfaction, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of such fees and charges shall be reimbursed or satisfied from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation. (1983, c. 322, s. 1.)

§ 159E-10. Security for deposits.

Obligations issued by public entities under the laws of one or more states, territories, or possessions of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, which are in registered form, whether or not represented by an instrument, and which, except for their form, satisfy the requirements with regard to security for deposits of moneys of public agencies prescribed pursuant to any law of this State, shall be deemed to satisfy all such requirements even though they are in registered form if a security interest in such obligations is perfected under the laws of this State on behalf of the public agencies whose moneys are so deposited. (1983, c. 322, s. 1.)

§ 159E-11. Public records; locations.

(a) Records, with regard to the ownership of or security interests in registered public obligations, are not subject to inspection or copying under any law of this State relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary. This provision shall not exempt from public inspection records of ownership of a public entity's own holdings in this type of security.

(b) Registration records of the issuer may be maintained at such locations within or without this State as the issuer shall determine. (1983, c. 322, s. 1.)

§ 159E-12. Applicability; determination.

(a) Unless at any time prior to or at original issuance of a registered public obligation the official or official body of the issuer determines otherwise, this Chapter shall be applicable to such registered public obligation notwithstanding any provision of law to the contrary. When this Chapter is applicable, no contrary provision shall apply.

(b) Nothing in this Chapter limits or prevents issuance of obligations in any other form or manner authorized by law.

(c) Unless determined otherwise pursuant to subsection (a) of this section, the provisions of this Chapter shall be applicable with respect to obligations which have heretofore been approved by vote, referendum or hearing authorizing or permitting the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing for the purpose of authorizing or permitting the authorization of registered public obligations pursuant to this Chapter. (1983, c. 322, s. 1.)

§ 159E-13. Construction.

This Chapter shall be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations. (1983, c. 322, s. 1.)

§ 159E-14. Amendment or repeal; effect.

The State hereby covenants with the owners of any registered public obligations that it will not amend or repeal this Chapter if the effect may be to impair the exemption from income taxation of interest on registered public obligations. (1983, c. 322, s. 1.)

§ 159E-15. Severability.

If any provision or the application of any provision of this Chapter shall be invalid, such shall not affect the validity of other provisions or other applications, it hereby being declared that the provisions or the applications of this Chapter are separable and this Chapter would have been enacted with the invalid provision omitted or without the invalid application in any event. (1983, c. 322, s. 1.)

Chapter 159F.

North Carolina Energy Development Authority.

§ 159F-1. Public purpose.

The purposes of this Chapter are to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of facilities to collect, separate and reclaim solid waste for energy production purposes where economically feasible, and to reduce the energy costs of public buildings and government operations by the development of resource recovery facilities and other energy-related facilities. (1983, c. 652, s. 2.)

Editor's Note. — Session Laws 1983, c. 652, s. 3, makes this Chapter effective upon ratification. The act was ratified June 30, 1983.

Session Laws 1983, c. 652, s. 1, provides: "This act may be referred to as the North Carolina Resource Recovery and Energy Facility Finance Act."

§ 159F-2. Legislative findings.

(a) The people of the State of North Carolina have the right to a clean and wholesome environment.

(b) The continuing technological progress and improvement in the methods and processes of manufacture, packaging and marketing of consumer products have resulted in an ever mounting increase of and change in the characteristics of the mass of material being discharged. The economic and population growth of the State and the improvements in the standards of living enjoyed by its population have required increased industrial production together with related commercial operations to meet these needs, resulting in a rising tide of discharged materials.

(c) Maximum resource recovery from solid waste is necessary to protect the public health, welfare, and quality of the natural environment. The ability to economically recover energy resources from solid waste and from other available resources has become a logical and necessary function to be assumed by the North Carolina Energy Development Authority.

(d) The energy costs associated with the operation and maintenance of State and local government buildings are significant. Reduction of those energy costs through development of energy resources such as resource recovery facilities and through conservation is an overriding public purpose.

Therefore, to assist the development of resource recovery facilities and to reduce the energy costs of the operation and maintenance of public buildings, it is desirable to create an Energy Development Authority, with the powers enumerated herein. It is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that the energy generation facilities created by such Authority and serving a specified geographic area shall be used by public or private owners or occupants of all

lands, buildings, and premises within said area, and a municipality may, by ordinance, require that all solid waste generated within said area and placed in the waste stream for disposal, shall be delivered to the permitted energy generation facility or facilities created by the Energy Development Authority. Actions taken pursuant to this Chapter shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this Chapter, a municipality may displace competition with public service for solid waste management and disposal. It is further determined and declared that no special purpose service district under the jurisdiction of the municipality or person, firm, corporation, association or entity within said geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules or regulations adopted pursuant to the authority granted herein. (1983, c. 652, s. 2.)

§ 159F-3. Definitions.

The following words and terms, unless the context clearly indicates a different meaning, will have the following respective meanings:

(1) "Authority" means the North Carolina Energy Development Authority created and established pursuant to this Chapter, or any successor thereto;

(2) "Bonds" means the bonds, provisional bonds, refunding bonds, obligations, notes, interim receipts or provisional bonds, certificates or other evidence of indebtedness issued under the provisions of this Chapter;

(3) "Costs" means the cost at fair market value, as determined by the Authority, of construction, real and personal property, property rights, utility extensions, disposal facilities, access roads, easements, franchises, financing charges, interest, labor, materials, machinery and equipment, engineering and legal services, plans, specifications, surveys, cost estimates, studies, transportation, interest during construction and for one year thereafter, debt service reserves, operating reserves, insurance and other expenses necessary or incidental to the design, development, construction, financing, management, operation and maintenance of an authorized project, and such other costs or purchasing expenses incurred by the Authority, as may be necessary, convenient or incidental to the purposes of the Authority, including administrative and operating costs, research and development costs, operating capital, fees, charges, loans, and the expenses associated with purchasing real and personal property;

(4) "Energy conservation measures" means all systems, facilities, property, services and personnel designed to reduce energy consumption in public buildings, either on an overall basis or at time of system peak, including but not limited to energy retrofit systems, load management systems, thermal energy storage units and other energy-saving devices;

(5) "Energy generation facility" means:

a. A resource recovery facility, defined as a facility which recycles or reclaims solid waste to produce materials or energy;

b. A facility which produces electric energy or useful thermal energy, and which depends for its primary source of fuel upon biomass, waste, peat, solar or wind energy or other renewable resources; or

c. A co-generation facility, defined as a facility which produces electric energy and another form of useful energy, regardless of the type of fuel used.

An energy generation facility, as defined herein, shall not be considered a "public utility" under the laws of this State, nor shall the structures, systems and equipment associated with such facility be considered "public buildings" within the laws of this State;

(6) "Energy services" means the furnishing of energy, including steam, from an energy generating facility or the installation, operation and maintenance of energy conservation measures;

(7) "Federal agency" means any agency of the United States government;

(8) "Joint venture" means a project in which ownership interests are held by one or more State agencies, units of local government, and/r federal agencies, and the Authority;

(9) "Municipality" means a county, city, town or incorporated village;

(10) "Person" means any individual, firm, partnership, joint venture, association, corporation, company, commission, institution, cooperative enterprise or other duly established legal entity organized or existing under the laws of this or any other state;

(11) "Project" means an energy generating facility or energy conservation measure authorized under this Chapter;

(12) "Resource recovery" means the processing of solid waste excluding those under control of the Atomic Energy Commission, which still have useful physical or chemical properties after serving a specific purpose in manufacture, agriculture, power production or other processes;

(13) "Revenues" means moneys or income received by the Authority in whatever form, including but not limited to fees, charges, lease payments, income on investments, proceeds of the sale of recycled products, payments due and owing on account of any instrument, contract or agreement between the Authority and any person, gifts, grants, bestowals or any other moneys or payments to which the Authority is entitled under the provisions of this Chapter, any other law, or of any agreement, contract or indenture of the Authority;

(14) "Solid waste" means garbage, rubbish, refuse, and other unwanted or discarded solid, semisolid, or liquid materials resulting from domestic, industrial, commercial, agricultural, and governmental operations, including putrescible and nonputrescible discarded material; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; wood wastes and inert materials; food waste; ashes; street cleanings; and combustible or noncombustible waste such as paper, rags, cardboard, wood, tin cans, weeds, glass, china, but not including municipal sewage, industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants, or material disposed of or separated by its owner for recycling; Provided, however, that no project shall handle a waste stream which possesses the characteristics of hazardous waste other than ignitability, as those characteristics are defined in applicable State and federal regulations;

(15) "Solid waste collection service" means any public or private activity for the collection and transportation of solid waste;

(16) "Special purpose service district" means a sanitary sewer district, metropolitan water and/or sewer district, county water and/or sewer district, hospital authority, hospital district, airport authority, school district, and any other unit of local government other than a county, city, town or incorporated village;

(17) "State agency" means any and all units of the government of North Carolina, including public universities and community colleges;

(18) "Unit of local government" means both municipalities and special purpose service districts as defined herein. (1983, c. 652, s. 2.)

§ 159F-4. Energy Development Authority.

(a) There is created and housed administratively within the North Carolina Department of Administration the North Carolina Energy Development Authority which shall be constituted an instrumentality of the State for the performance of essential governmental functions.

The Authority shall continue until its existence shall be terminated by law. Upon the termination of the existence of the Authority, all of its rights and properties shall pass to and be vested in the State.

(b) The Authority shall consist of five members, appointed by the Governor for two-year terms. One member shall be experienced in energy matters, one member shall be experienced in solid waste matters, and a third member shall be experienced in the financing of public facilities. The members shall be compensated for per diem and allowances as provided in G.S. 138-5 and G.S. 138-6.

(c) The Department of Administration shall provide such technical and clerical services and personnel as the Authority may require in the performance of its functions and shall provide liaison services with other agencies of State government to disseminate information and comment on Authority matters. The Authority shall reimburse the Department for such services from its revenues or from any other funding source.

(d) To the extent necessary, the Authority shall require any participating State agency, unit of local government or federal agency to advance funds to pay for the expenditures required by subsections (b) and (c) and other preliminary costs. Such funds shall be reimbursed to the advancing party from the proceeds of the sale of revenue bonds for the proposed project. (1983, c. 652, s. 2.)

§ 159F-5. Powers of the Authority.

(a) The Authority or any joint venture created pursuant to this Chapter shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the following powers:

(1) The power to construct, reconstruct, install, design, improve, expand, operate, maintain, lease, transfer, assign, or own in whole or in part, energy conservation measures or energy generation facilities for the benefit of any participating State agencies, units of local government and federal agencies and to enter into joint ventures with State agencies, units of local government and federal agencies to effectuate the purposes of this Chapter;

(2) The power to make plans, surveys, studies and investigations necessary or desirable, with due consideration for local or regional plans, if any, to carry out Authority functions with respect to the acquisition, use and development of real property and the design and construction of systems and facilities;

(3) The power to acquire by deed, purchase, lease, contract, gift, devise, condemnation (as to real property only within the geographic boundary of any participating unit of local government) or otherwise, any real or personal property, structures, right-of-way, franchises, ease-

ments, and other interests in lands located within the geographic boundary of any participating unit of local government or owned by any participating State or federal agency and which is necessary and convenient for the construction or operation of a project, upon such terms and conditions as it deems advisable, and to lease, sell, or dispose of the same in such manner as may be necessary or desirable to carry out the objects and purposes of this Chapter; Provided, however, that any lease or conveyance of real property owned by the Authority or by other State agencies to a private person must reflect the fair market value of the property leased or conveyed;

(4) The power to select, approve and contract for services in the performance of architectural and engineering design and the power to select, approve and contract for the supervision of design and construction, project construction, system management and other professional or technical services as may be required for either prequalification of a contractor or the resubmission by any person or association of persons of a proposal in response to an official request for proposal or similar written communication of the Authority, whenever such services are, in the discretion of the Authority, deemed necessary, desirable or convenient in carrying out the purposes of the Authority; Provided, however, that the Authority's obligations to pay under the contract shall not be secured by the full faith and credit of the State of North Carolina, but shall be secured by the assets of the Authority;

(5) The power to contract with any person, State agency, unit of local government or federal agency for the performance of all services, including solid waste collection or management services and energy services, necessary to effectuate the purposes of this Chapter; Provided, however, that the obligation of the Authority, such State agency or unit of local government to pay under any contract shall not be secured by the full faith and credit of the State of North Carolina, such State agency or unit of local government;

(6) The power to contract with any person to sell energy or other by-products of energy generation facilities and to collect revenue therefrom;

(7) In connection with the financing of an energy generation facility, the power to compel any participating State agency, special purpose service district, or federal agency to adopt and enforce a solid waste management plan, and the power to compel any participating municipality to adopt and enforce an ordinance, which plan or ordinance shall provide that any or all persons subject to the jurisdiction of the participating party shall use the services and facilities of the Authority for solid waste management; Provided, however, that if a private solid waste landfill shall be substantially affected by such plan or ordinance then the unit of local government compelled to adopt the plan or ordinance shall be required to give the operator of the affected landfill at least 2 years' written notice prior to the effective date of the proposed plan or ordinance. The Authority may permit separation and exclusion of specific kinds of waste if it determines that such waste is not necessary for the operation of the facility;

(8) The power and obligation to review and actively supervise the enforcement of such solid waste plans or ordinances, when adopted in conjunction with a project;

(9) The power to adopt fee schedules, user charges, and other charges for the use and operation of facilities under its jurisdiction and control and to approve and supervise the enforcement of such schedules or charges when adopted by a unit of local government in connection with a project;

(10) The power to pledge revenues from such facilities to the benefit of bondholders or for other purposes necessary to secure financing;

(11) The power to procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property as well as to indemnify and save harmless it and its officers, agents, or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function of the Authority;

(12) The power to do anything else necessary for the construction, operation and maintenance of such facilities and not otherwise prohibited by law;

(13) The power to receive, administer, and comply with the conditions or requirements respecting any appropriation or gift, grant or donation of any money, including moneys from State or federal sources;

(14) The power to sue and be sued in its own name, plead and be impleaded;

(15) The power to adopt an official seal and alter the same at pleasure; and

(16) The power to adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties.

(b) Neither the Authority nor any joint venture established under this Chapter shall be subject to the following provisions of the General Statutes of North Carolina: Article 7, Chapter 129 (North Carolina Capital Building Authority); Chapter 146 (State Lands); Article 3, Chapter 143 (Purchases and Contracts); G.S. 143-128, as to the construction and operation of those facilities which produce steam or electrical energy and which depend upon waste, biomass or renewable resources for their primary source of fuel and for which single contractual responsibility is required for the construction and operation of the facility for a specified period of time; G.S. 143-341(3).

(c) Notwithstanding the powers granted in subsection (a), the Authority shall not have the power to require any State agency, municipality, or special purpose service district to contract or enter into a joint venture with the Authority. (1983, c. 652, s. 2.)

§ 159F-6. Compliance with laws applicable to environmental pollution abatement and control.

This Chapter shall not be construed as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes relating to the abatement or control of environmental pollutants and wastes and toxic or hazardous wastes and substances, nor shall the provisions of this Chapter be construed as being applicable to or in any way affecting the authority of State agencies and commissions to control the discharge of environmental pollutants and wastes and toxic or hazardous wastes substances into the air, soil, or waters of the State. The Authority shall be considered a State agency for purposes of the North Carolina Environmental Policy Act. (1983, c. 652, s. 2.)

§ 159F-7. Powers of State agencies and units of local government necessary to fulfill obligations under a joint venture.

(a) All State agencies and units of local government shall have the power to enter into joint ventures or contracts with the Authority to effectuate the purposes of this Chapter.

(b) When a State agency or unit of local government enters into a joint venture or contract with the Authority, that agency or unit of local government shall have the power to:

(1) Impose, charge and collect fees for the use of the services of a project and appropriate and contribute funds to the joint venture or project, when directed to do so by the Authority. Such appropriations may be funded from any available moneys, including the proceeds of bonds of the units of local government issued pursuant to the Local Government Bond Act, G.S. 159-44 et seq.

(2) Agree to deliver all solid waste collected within the jurisdiction of such agency or unit of local government and to pay a charge for the disposal thereof which may be fixed or based upon a formula. Such agreement may be for such period of years as may be deemed necessary by such agency or unit of local government, but shall not exceed 40 years. Such agreement may be renewed under such terms as may be set forth therein for such additional terms as may be deemed necessary and advisable by such agency or unit of local government. Payment of service charges pursuant to the terms of such agreements may be made by appropriations or from user charges. The enforcement of such agreement shall be subject to the direction and active supervision of the Authority.

(3) Give, sell, lease, contract or assign any real or personal property, structures, rights, rights-of-way, franchises, easements, or other interests in land to the Authority or to the joint venture.

(c) When a municipality enters into a joint venture or contract with the Authority, that municipality shall also have the power to adopt, at the direction and supervision of the Authority, solid waste ordinances necessary to effectuate the purpose of this Chapter and further described in G.S. 159F-2 and G.S. 159F-5. All solid waste management practices and ordinances adopted pursuant to this Chapter shall also conform to the solid waste management program established under G.S. 130-166.18. (1983, c. 652, s. 2.)

Editor's note. — Section 130-166.18, referred to in subsection (c) of this section, was repealed by Session Laws 1983, c. 891, s. 1, effective January 1, 1984. As to solid waste management, see now § 130A-290 et seq.

§ 159F-8. Issuance of revenue bonds.

(a) The Authority is hereby authorized to issue revenue bonds in such principal amount as may be necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the costs of one or more projects described herein, including engineering, inspection, legal and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and all other project costs defined in G.S. 159F-3(3) and, if deemed advisable by the Authority, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all

other expenditures of the Authority incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, the Authority may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Chapter.

(b) Obligations issued under the provisions of this Chapter shall not be deemed to constitute a debt or liability or obligation of the State or of any municipality or political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues of the Authority. Each obligation issued under this Chapter shall contain on the face thereof a statement that the Authority shall not be obligated to pay the same nor interest thereon except from the revenues pledged therefor, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

(c) The bonds or coupons issued by the Authority which are duly certified by the officials of the Authority in the exercise of their functions on the date of their signing, shall be held valid, binding and sufficient for all purposes even though prior to the delivery and payment of such bonds or coupons, any or all of the officials of the Authority whose signatures or legal facsimile thereof that appear on the documents have ceased in their official functions in the Authority. The validity of the authorization and bond issue shall not depend or be affected by any procedure related to the construction, acquisition, expansion, or improvement of the project for which the bonds have been issued, or by any contract entered in connection with such project. Any resolution authorizing the bond issue may provide that such bonds shall contain a clause to the effect that they are being issued pursuant to the provisions of this Chapter, and any bond containing the referred clause, authorized by a resolution of the Authority, shall be deemed conclusively valid and issued pursuant to the provisions of this Chapter.

(d) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the North Carolina Uniform Commercial Code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the North Carolina Uniform Commercial Code, and shall be deemed to be so for all purposes, at all time in the absence of any express statement that it is not assignable.

(e) Neither the directors of the Authority nor any person executing bonds and coupons shall be liable personally on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The Authority, subject to such agreements with bondholders as may then exist, shall have power out of any funds available therefor to purchase bonds of the Authority or bonds which may be assumed by the Authority, which bonds shall thereupon be cancelled, at a price not exceeding:

(1) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon; or

(2) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to the date of purchase, whereupon which notes or bonds shall be cancelled.

(g) The Authority may not issue revenue bonds under this Chapter unless the issue is approved by the Local Government Commission. The Authority, or its duly authorized agent, shall file an application for Local Government Commission approval of the issue with the secretary of the Local Government

Commission. The application shall state such bonds and the financial condition of the Authority and its enterprises as the secretary may require. The Local Government Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the Authority or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the proposed issue and the timing of the steps to be taken in issuing the bonds.

After an application in proper form and order has been filed, and after a preliminary conference if one is required, the secretary shall notify the Authority in writing that the application has been filed and accepted for submission to the Local Government Commission. The secretary's statement shall be conclusive evidence that the Authority has complied with this section.

(h) In determining whether a proposed revenue bond issue shall be approved, the Local Government Commission may consider:

(1) Whether the project to be financed from the proceeds of the revenue bond issue is necessary or expedient;
(2) Whether the proposed project is feasible;
(3) The Authority's debt management procedures and policies;
(4) Whether the Authority is in default in any of its debt service obligations;
(5) Whether the probable net revenues of the project to be financed will be sufficient to service the proposed revenue bonds; and
(6) The ability to market the proposed revenue bonds at reasonable rates of interest.

The Local Government Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved.

The Local Government Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That the proposed revenue bond issue is necessary or expedient;
(2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue;
(3) That the proposed project is feasible;
(4) That the Authority's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law; and
(5) That the proposed revenue bonds can be marketed at reasonable interest cost.

(i) After considering an application the Local Government Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

If the Commission enters an order denying the application, the proceedings under this Chapter shall be at an end.

(j) At any time after the Local Government Commission approves an application for the issuance of revenue bonds, the Authority may adopt a revenue bond order pursuant to this Chapter.

(k) A revenue bond order or a trust agreement securing revenue bonds may contain covenants as to:

(1) The pledge of all or any part of revenues received or to be received from the undertaking to be financed by the bonds, or the enterprise of which the undertaking is to become a part;
(2) Rates, fees, rentals, tolls or other charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants, and funds received or to be received;

(3) The setting aside of debt service reserves and the regulation and disposition thereof;

(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of revenue bonds;

(5) Limitations or restrictions on the purposes to which the proceeds of sale of revenue bonds then or thereafter to be issued may be applied;

(6) Limitations or restrictions on the issuance of additional revenue bonds or notes, the terms upon which additional revenue bonds or notes may be issued and secured, or the refunding of outstanding or other revenue bonds;

(7) The procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated, the percentage of revenue bonds the bondholders of which must consent thereto, and the manner in which such consent may be given;

(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which revenue bonds issued under this Chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget with respect to the expenses of the Authority for the operation and maintenance of revenue bond projects;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants in connection with revenue bond projects;

(11) Limitations on or the prohibition of free service by revenue bond projects to any person, firm or corporation, public or private;

(12) The acquisition and disposal of property for revenue bond projects;

(13) Provisions for insurance and for accounting reports and the inspection and audit thereof; or

(14) The continuing operation and maintenance of the revenue bond project or the enterprise of which it is to become a part.

(l) In fixing the details of revenue bonds, the Authority shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122.

(2) No bonds may be made payable on demand, but any bond may be made subject to redemption prior to maturity, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium, and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places without or within the State of North Carolina, as the issuing Authority may determine.

(m) All revenue bonds issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in the bond order, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Chapter and of the bond order; except that that Authority may provide in a revenue bond order that revenue bonds issued pursuant thereto shall to the extent and in the manner prescribed in the order or agreement be subordinated and junior in

standing, with respect to the payment of principal and interest and the security thereof, to any other revenue bonds.

Any pledge made by the Authority pursuant to this Chapter shall be valid and binding from the date of final passage of the bond order upon the issuance of any bonds or bond anticipation notes thereunder. The revenues, securities and other moneys so pledged and then held or thereafter received by the Authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority without regard to whether such parties have notice thereof.

(n) Whether or not the revenue bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all revenue bonds and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration.

(o) Notwithstanding any other provisions of this Chapter, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the Chapter upon request of the Authority and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this Chapter.

The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys. The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters, and bond attorneys to be associated with the bond issue.

Nothing in this Chapter is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes. (1983, c. 652, s. 2.)

§ 159F-9. Energy Fund.

(a) Revenues received by the Authority, in excess of those required to be paid to other participants in a joint venture or paid to or held for the benefit of the holders of bonds pursuant to the provisions of any revenue bond order or trust agreement and to meet other obligations of the Authority, shall be maintained in an Energy Fund.

(b) The Energy Fund shall be deposited in an escrow account to be maintained within the control of the Office of the State Treasurer.

(c) Upon approval of the Local Government Commission and after consultation with the Advisory Budget Commission, the Authority may apply the proceeds held in the Fund to energy-related projects, including research and development activities, for the benefit of State agencies.

(d) After consultation with the Advisory Budget Commission and with the approval of the Local Government Commission, the Authority may pledge the assets of the Energy Fund as security for any bond issue approved under G.S. 159F-8. (1983, c. 652, s. 2.)

Chapter 160A.

Cities and Towns.

Article 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

(8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this Chapter, a bona fide department which, as determined by the Commissioner of Insurance, is classified as not less than class "9" in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to Article 12B or Article 13C of Chapter 58 of the General Statutes, and which operates fire apparatus and equipment of the value of five thousand dollars ($5,000) or more; but it does not include a municipal fire department. (1971, c. 698, s. 1; 1973, c. 426, s. 3; 1983, c. 636, s. 17.1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Union: 1983, c. 150; (As to Chapter 160A) Cabarrus: 1985, c. 194, s. 3.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provi-

sions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, added subdivision (8).

CASE NOTES

Constitutionality. — See In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

"Special use" or "conditional use" are terms used interchangeably to refer to a permit issued for a use which an ordinance expressly permits in a designated zone upon proof that certain facts or conditions detailed in the ordinance exist. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

§ 160A-3. General laws supplementary to charters.

Local Modification. — Village of Bald Head Island: 1985, c. 156.

§ 160A-4. Broad construction.

CASE NOTES

Applied in City of Durham v. Herndon, 61 N.C. App. 275, 300 S.E.2d 460 (1983).

Stated in Town of West Jefferson v. Edwards, — N.C. App. —, 329 S.E.2d 407 (1985).

Article 3

Contracts.

§ 160A-20.1. Contracts with private entities.

A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. (1985, c. 271, s. 1.)

Editor's Note. — Session Laws 1985, c. 271, s. 3, makes this section effective on ratification. The act was ratified May 28, 1985.

Article 4A.

Extension of Corporate Limits.

Local Modification. — (As to this Article) Municipalities in Craven County: 1985, c. 92, s. 2; Village of Pinehurst: 1985, c. 379, s. 4.

Part 1. Extension by Petition.

§§ 160A-24 to 160A-28: Repealed by Session Laws 1983, c. 636, s. 26, effective June 29, 1983.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Local Modification. — (As to Part 1) Town of Dobbins Heights: 1983, c. 658.

CASE NOTES

As to the constitutionality of this Article, see Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C 743, 315 S.E.2d 701, appeal dismissed, — U.S. — , 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

§ 160A-31. Annexation by petition.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 160A-32: Repealed by Session Laws 1983, c. 636, s. 26.1, effective June 29, 1983.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy.

It is hereby declared as a matter of State policy:

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-35(3). (1959, c. 1010, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — (As to Part 2) Durham and Wake: 1985, c. 435, s. 2; Town of Dobbins Heights: 1983, c. 658; village of Sugar Mountain: 1985, c. 395.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted "in accordance with G.S. 160A-35(3)" for "as soon as possible following annexation" at the end of subdivision (5).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Application to Property of Condominium Owners. — Condominium unit owners need municipal services like water, sewage disposal, and police and fire protection just as do homeowners in any new development. It would lead to anomalous results and violate legislative intent to construe the statute as applying to the property of homeowners but not to the property of condominium unit owners. Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

§ 160A-34. Authority to annex.

The governing board of any municipality having a population of less than 5,000 persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part, except that this Part does not apply to any municipality in Craven County having a population of less than 500 persons according to the last federal decennial census unless that municipality provides at least six of the seven categories of municipal services listed in G.S. 136-41.2(c). (1959, c. 1010, s. 2; 1973, c. 426, s. 74; 1985, c. 92, s. 1.)

Effect of Amendments. — The 1985 amendment, effective April 12, 1985, added the language beginning "except that this Part does not apply" at the end of the section.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be

annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. (1959, c. 1010, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7.1, 16, 18; 1985, c. 610, ss. 1, 5, 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 610, s. 8, which amended this section, provides that the act applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, except that ss. 5 and 6 of the act are effective upon ratification (July 4, 1985).

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, added the second sentence of subdivision (1)b, inserted the present second sentence of subdivision (3)a, and added subdivision (4).

The 1985 amendment by c. 610, s. 1, applicable to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, substituted "solid waste collection" for "garbage collection" in the first sentence of paragraph (3)a.

The 1985 amendment by c. 610, s. 5, effective July 4, 1985, added the last sentence of paragraph (3)a.

The 1985 amendment by c. 610, s. 7, applicable to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, substituted "solid waste" for "garbage" in the last sentence of paragraph (3)a, as added by s. 5 of c. 610.

CASE NOTES

The legislature has empowered municipal governing boards to amend the report, required by this section, in order to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of this section. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Public Hearing. — There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with this section, pursuant to the authority granted in § 160A-37(e). Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Providing nondiscriminating level of services within statutory time is all that is required. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

§ 160A-36. Character of area to be annexed.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. (1959, c. 1010, s. 4; 1973, c. 426, s. 74; 1985, c. 757, s. 205(c).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, substituted "and may use streets as boundaries" for "and if a street is used as a boundary, include within the municipality developed land on both sides of the street" at the end of subsection (d).

CASE NOTES

Both Tests Must Be Complied With. — Both the "use" test and the "subdivision" test must be met before an area can be classified as urban. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

When Annexation Proper Generally. — The language of subsection (a) of this section makes it clear that a municipality may annex any area which meets the general standards of subsection (b) and the requirements of subsection (c). Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Particular Facts Control in Doubtful Cases. — When compliance with the statutory requirements is in doubt, the determination of whether an area is used for a purpose qualifying it for annexation will depend upon the particular facts of each case. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Industrial Classification Proper Where Actively So Used. — When an area is used for an active industrial purpose, the land is properly classified as in industrial use within the

meaning of the annexation statute. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Industrial Classification Improper Absent Evidence of Such Use. — An area proposed for annexation is improperly classified as property in use for industrial purposes where there is no evidence that the land in question is being used either directly or indirectly for industrial purposes. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Transmission of electrical power over land by a power company is an industrial activity for an urban use. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

For discussion as to history and scope of subsection (c), see Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

The word "lot" in subsection (c) includes the concept of a condominium unit. Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Purpose of Subsection (d). — The legislative history of subsection (d) of this section suggests that the reason for its inclusion was the Legislature's concern that the full range of municipal services be available to citizens in the annexed area, recognizing that water and, particularly, sewer services are necessarily limited by natural drainage boundaries, the Municipal Government Study Commission, whose recommendations were followed in establishing the present annexation procedures, included topography as an important consideration to be incorporated into the new statutory scheme of annexation. In order to ensure consideration of such topographic features, subsection (d) of this section was enacted specifically enumerating certain features which create natural drainage boundaries. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Subsection (d) contains no mandatory standards or requirements for annexation. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Requirements of Subsection (d) Not Intended to Defeat Otherwise Proper Annexation. — It was not the intent of the Legislature to defeat the annexation of an area which was otherwise ripe for annexation because of the directory language contained in subsection (d) of this section. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

"Practical" as used in subsection (d) is defined as "that which is possible of reasonable performance." Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Proof of Noncompliance with Subsection (d). — In order to establish noncompliance with subsection (d) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow natural topographic features, and (2) that it would have been practical for the boundary to follow such features. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Tree lines do not constitute "natural topographic features" within the meaning of the requirement of subsection (d) of this section. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

§ 160A-37. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to

be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public hearing a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(e) Passage of the Annexation Ordinance. —The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(i) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk.

(j) (Effective with Respect to All Annexations where Resolutions of Intent Are Adopted on or after July 1, 1984.) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5; 1983, c. 636, ss. 2, 4, 6, 36; 1985, c. 384, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted "not less than 45 days and not more than 90 days" for "not less than 30 days and not more than 60 days" in the second sentence of subsection (a); rewrote subsection (b); in subsection (c) substituted "At least 30 days" for "At least 14 days" at the beginning of the first sentence and added the third sentence; and in subsection (e) substituted "no sooner than the tenth

day following the public hearing and not later than 90 days" for "no sooner than the seventh day following the public hearing and not later than 60 days" in the second sentence of the introductory paragraph and rewrote subdivision (4). In addition, the 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, added subsections (i) and (j).

The 1985 amendment, effective with respect to annexations when resolutions of intent under G.S. 160A-37(a) or G.S. 160A-49(a) are adopted after June 13, 1985, rewrote the first sentence of the second paragraph of subsection (b), which formerly read "Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the hearing."

CASE NOTES

The legislature has empowered municipal governing boards to amend the report, required by § 160A-35, to accommodate changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of § 160A-35. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Public Hearing. — There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with § 160A-35, pursuant to the authority granted in subsection (e) of this section. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Applied in Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240 (1982).

§ 160A-37.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexa-

tion by paying such annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-38 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150A of the General Statutes. (1983, c. 636, s. 20.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

§ 160A-37.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 17 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the as-

sessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commisson for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 22.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the applicaiton of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a private solid waste collection firm or firms:

(1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(j) or

(2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(i)

was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:

(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and

(4) During the 90-day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars ($500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and

(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing,

unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:

(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city

in the area to be annexed for sums determined under subsection (d) of this section, or

(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.

(c) The city may require that the contract contain:

(1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers, and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the private firm under this subsection, such matters shall be determined by the Local Government Commission.

(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.

(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section,

collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(g) If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may appeal to the Local Government Commission. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150A of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than five days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. (1985, c. 610, s. 3.)

Editor's Note. — Session Laws 1985, c. 610, s. 8 provides that this section applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

§ 160A-38. Appeal.

CASE NOTES

Which Puts Burden on Petitioners, etc. In accord with 1st paragraph in original. See Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Findings of fact of the superior court are binding on appeal if supported by competent evidence, even though there is evidence to the contrary. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Applied in In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

Cited in Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

§ 160A-41. Definitions.

Local Modification. — Town of Atlantic Beach: 1983, c. 341.

§ 160A-42. Land estimates.

CASE NOTES

Use of planimeter to calculate acreage. — See Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Applied in Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983).

§§ 160A-43, 160A-44: Repealed by Session Laws 1983, c. 636, s. 27, effective June 29, 1983.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Section 160A-44 was amended by Session Laws 1983, c. 351, § 5, effective May 23, 1983.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-47(3). (1959, c. 1009, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — (As to Part 3) Durham and Wake: 1985, c. 435, s. 2; town of Dobbins Heights: 1983, c. 658.

Editor's Note. —

Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted "in accordance with G.S. 160A-47(3)" for "as soon as possible following annexation" at the end of subdivision (5).

CASE NOTES

Provisions Not Unconstitutional as Special or Local Legislation. — Sections 160A-45 through 160A-50 are not unconstitutional as special or local legislation even though as enacted the statutes exempted certain counties from their application, because municipal annexation is not one of the subject matter areas which the Constitution requires to be accomplished by general or uniformly applicable laws. In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Sections 160A-45 et seq. do not violate N.C. Const., art. II, § 24, which prohibits the General Assembly from enacting "any local, private, or special act or resolution" in regard to certain enumerated subjects. This constitutional provision does not apply to annexation proceedings by municipalities, since N.C. Const., art. VII, § 1, authorizes the General Assembly "except as otherwise prohibited by this Constitution" to "give such powers and duties to counties, cities, and towns and other governmental subdivisions as it may deem advisable," and no other provision of the Constitution prohibits the General Assembly from enacting special legislation for the annexation of areas by municipalities. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Nor as Denial of Equal Protection. — Part 3 of Article 4A of Chapter 160A does not deny equal protection under either the state or federal Constitutions. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

Legislative Intent. —

To apply strictly interpretation to §§ 160A-45 to 160A-56 would contravene the intent of the legislature, which is to obtain a meaningful review of annexation ordinances. Southern Glove Mfg. Co. v. City of Newton, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The General Assembly has established detailed criteria and guidelines for annexation under Part 3 of this Article. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C 630, 315 S.E.2d 697 (1984).

The legislature has recognized the importance of adequate water and sewer facilities to the end of quality urban development and specifically required that certain present and proposed water and sewer facilities be shown in the report. That the legislature did not include proposed sewer interceptors among those certain facilities is a matter of legislative concern. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Discovery. — Though discovery in annexation proceedings is not altogether forbidden, its scope is necessarily limited by the nature of

the proceeding. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Judicial Review. — The General Assembly has provided for limited judicial review of annexation ordinances. Section 160A-50 provides that a property owner in the annexed area may seek judicial review of the ordinance. Upon such review, the superior court may consider only whether (1) the statutory procedure was not followed, or (2) the provisions of § 160A-47 were not met, or (3) the provisions of § 160A-48 have not been met. Additionally, petitioner must carry the burden of showing both noncompliance with statutory requirements and procedure and material injury flowing from such noncompliance. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Applied in In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380 (1983).

§ 160A-46. Authority to annex.

CASE NOTES

Cited in McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
   c. The general land use pattern in the area to be annexed.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
   b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are

constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.

c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.

d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. (1959, c. 1009, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7, 10, 11, 17, 19; 1985, c. 610, ss. 2, 6, 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as

provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1985, c. 610, s. 8, which amended this section, provides that the act applies to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, except that ss. 5 and 6 of the act are effective upon ratification (July 4, 1985).

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, added the second sentence of subdivision (1)b, inserted the present second sentence of subdivision (3)a, added the last two sentences of subdivision (3)b, rewrote subdivision (3)c, and added subdivision (4).

The 1985 amendment by c. 610, s. 2, applicable to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, substituted "solid waste collection" for "garbage collection" in the first sentence of paragraph (3)a.

The 1985 amendment by c. 610, s. 6, effective July 4, 1985, added the last sentence of paragraph (3)a.

The 1985 amendment by c. 610, s. 7, also applicable to all annexations where a resolution of intent under Parts 2 or 3 of Article 4A of Chapter 160A is adopted on or after September 1, 1985, substituted "solid waste" for "garbage" in the last sentence of paragraph (3)a, as added by s. 5 of c. 610.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

This Article requires that services, etc. — The city is required by law to provide waste disposal services on substantially the same basis and in the same manner as such services are provided within the municipality prior to annexation. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Nowhere in this section does the concept of equality with "average service" appear in reference to the municipal services to be supplied by the annexing municipality. No reasonable reading of the statutory language permits that inference. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Subdivision (3)(a) of this section requires that the annexation report reflect the city's plans to provide certain enumerated services on substantially the same basis and in the same manner as in the rest of the city. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The minimum requirements, etc. —

In accord with original. See Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The report need contain only the following: (1) information on the level of services then available in the city, (2) a commitment by the city to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the city will finance the extension of these services. With this minimal information, both the city council and the public can make an informed decision of the costs and benefits of the proposed annexation, a reviewing court can determine whether the city has committed itself to a nondiscriminating level of services, and the residents and the courts have a benchmark against which to measure the level of services which the residents receive within the statutory period. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. Cock-

rell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Services Listed in Subdivision (3) Must Be Described in Plan. — The annexation statute requires municipalities to include in their annexation reports plans to extend into the area proposed to be annexed only those municipal services specifically enumerated in subdivision (3) of this section: police protection, fire protection, garbage collection, street maintenance, major trunk water mains, and sewer outfall lines. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

But Plans for Other Services Need Not Be Included. — In a municipal annexation proceeding the city is not required to include in its annexation report plans for extending into the proposed annexation area municipal services other than those enumerated in subdivision (3) of this section. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The legislative intent expressed in subdivision (3) requires extension of a variety of municipal services, all of which are required for the public health and safety. Public transportation and parks and recreational facilities do not fall within this classification of service. In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

Plans Required Only for Major Services. — The required information is not that of plans for extending all municipal services, but only the "major" municipal services. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

City bus service and TV service are not "major" municipal services required to be addressed in the annexation report. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Plans Should Be Stated Fully and in Detail. — The report of plans for extension of services is the cornerstone of the annexation procedure under this Part, and to be of greatest possible benefit, the plans for services should be stated as fully and in as much detail as resources of the municipality reasonably permit. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Service Is Municipal Even If Performed by Another. — A service, such as water or sewer service, is a "municipal service" even though it is performed or furnished by an independent authority or by franchise. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

And Must Still Be Included in Plan. — If the municipal service is one enumerated in subdivision (3) of this section, it must be included in the annexation report even though it is provided by an independent authority or under a franchise agreement. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The requirement that the annexation report contain a statement setting forth the plans for extending each major municipal service extends to a major service "performed within the municipality," not performed by the municipality. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

There are many variables that affect the level of fire protection afforded to different areas of a municipality: height and size of buildings, construction materials, proximity of buildings to one another and street pattern, among others. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Response time is only one of many factors that enters into the court's consideration of whether an annexation report reflects plans to provide certain required municipal services on substantially the same basis and in the same manner as in the pre-annexation city area. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The legislature has recognized the importance of adequate water and sewer facilities to the end of the quality urban development and specifically required that certain present and proposed water and sewer facilities be shown in the report. That the legislature did not include proposed sewer interceptors among those certain facilities is a matter of legislative concern. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Burden of Showing Noncompliance. — In accord with 1982 Interim Supp. See Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various

procedures prescribed, as to its annexation plan meeting the requisites of this section, and as to the area involved being eligible for annexation under § 160A-48, in those instances where discovery may illuminate these issues it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in Knight v. City of Wilmington, — N.C. App. —, 326 S.E.2d 376 (1985).

Cited in Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984); Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 160A-48. Character of area to be annexed.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. (1959, c. 1009, s. 4; 1973, c. 426, s. 74; 1983, c. 636, s. 15; 1985, c. 757, s. 205(d).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted

"sixty-five percent (65%)" for "sixty percent (60%)" in subdivision (c)(2).

The 1985 amendment, effective July 15, 1985, substituted "and may use streets as boundaries" for "and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street" at the end of subsection (e).

CASE NOTES

Constitutionality. — See In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

Tests as to Urban, etc. —

Not only must the entire annexation area meet the requirements of subdivision (c)(1) of this section, but even more importantly, the tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

In order to establish noncompliance with subsection (e) of this section, it must be shown: (1) that the boundary of the annexed area does not follow topographic features, and (2) that it would have been practical for the boundary to follow such features. In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of § 160A-47, and as to the area involved being eligible for annexation under this section, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in Garland v. City of Asheville, 63 N.C. App. 490, 305 S.E.2d 66 (1983); Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983); Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir. 1983); Knight v. City of Wilmington, — N.C. App. —, 326 S.E.2d 376 (1985).

Stated in Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984).

Cited in Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984).

§ 160A-49. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to

be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public hearing, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In show-

ing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk.

(j) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars ($100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars ($10,000,000) and the petitioner's tax levy was one thousand dollars ($1,000), the amount of release or refund shall be ten dollars ($10.00). (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are re-

pealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

"Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The first 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, rewrote subsections (a) through (c); in subsection (e) inserted the proviso at the end of the first sentence, substituted "no sooner than the tenth day following the public hearing and not later than 90 days" for "no sooner than the seventh day following the public hearing and no later than 60 days" in the second sentence, inserted "and such water and sewer lines as required in G.S. 160A-47(3)(b)" in the first sentence of subdivision (e)(3), and rewrote subdivision (e)(4); inserted "for any required service other than water and sewer services" in the first sentence of the first paragraph of subsection (h) and rewrote the second paragraph of subsection (h); and added a subsection (j), which was redesignated by Session Laws 1983, c. 768, s. 25, as subsection (k). In addition, the first 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, added subsections (i) and (j).

The second 1983 amendment, effective July 15, 1983, substituted "order to the municipality" for "order by the municipality" in the first sentence of the second paragraph of subsection (h).

The 1985 amendment, effective with respect to annexations when resolutions of intent under G.S. 160A-37(a) or G.S. 160A-49(a) are adopted after June 13, 1985, rewrote the first sentence of the second paragraph of subsection (b), which formerly read "Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the hearing."

Legal Periodicals. —

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

Challenges to annexations generally are not actionable under U. S. Const., amend. XIV. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Absolute and literal compliance with this section is unnecessary; only substantial compliance is required. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Increase in Voters through Annexation Requires Preclearance under 42 U.S.C. § 1973c. — The increase in the number of voters in the municipality resulting from annexation is a charge of a voting qualification, prerequisite, standard, practice, or procedure requiring preclearance as contemplated by 42 U.S.C. § 1973c. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Elections Held before Preclearance under 42 U.S.C. § 1973c. — Until the city obtains clearance of its annexations in accordance with 42 U.S.C. § 1973c, all future elections must be conducted on the basis of the city boundaries as they existed before the unprecleared annexations were made, and citizens residing in such annexed areas may not participate in future municipal elections, either as electors or as candidates. This relief applies only to the right to vote and be a candidate. It does not, of course, constitute de-annexation, and it does not affect the rights of citizens re-

siding in the annexed areas in any other way. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Persons in Annexed Areas May Be Denied Vote During 60-Day Approval Period. — Although those in annexed areas become citizens of the annexing jurisdiction upon annexation, under 42 U.S.C. § 1973c, it is proper to deny such persons the right to vote on a bond referendum held within 60 days of the annexation since that section gives the United States Attorney General 60 days within which to approve an annexation expanding the number of voters. 42 U.S.C. § 1973c was designed, in part, to enforce U.S. Const., amend. XV, and it preempts all other provisions regarding the right to vote in such referenda. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Applied in In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380 (1983); Garland v. City of Asheville, 63 N.C. App. 490, 305 S.E.2d 66 (1983); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Knight v. City of Wilmington, — N.C. App. —, 326 S.E.2d 376 (1985).

Cited in In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984).

§ 160A-49.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-50 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150A of the General Statutes. (1983, c. 636, s. 21.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

§ 160A-49.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 23.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-49.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:

(1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or

(2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)

was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:

(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and

(4) During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars ($500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and

(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing,

unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:

(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or

(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.

(c) The city may require that the contract contain:

(1) A requirement that the private firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the private firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the private firms, or by the city as to customers not served by the private firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled for substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the private firm under this subsection, such matters shall be determined by the Local Government Commission.

(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.

(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.

(g) If the city fails to offer a contract to the private firm within 30 days following the passage of an annexation ordinance, the private firm may appeal to the Local Government Commission. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local

Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150A of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than five days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and//or economic loss. (1985, c. 610, s. 4.)

Editor's Note. — Session Laws 1985, c. 610, s. 8 provides that this section applies to all annexations where a resolution of intent under Parts 2 or 3 under Article 4A of Chapter 160A is adopted on or after September 1, 1985.

Chapter 150A, referred to in this section, was rewritten by Session Laws 1985, c. 746, s. 1, effective January 1, 1986, and has been recodified as Chapter 150B.

§ 160A-50. Appeal.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g), and in either case a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. —

The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, added subsection (j).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

The central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents of the annexed area receive the benefits of all the major services available to municipal residents. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Constitutional Challenges Restricted. — Attacks on state annexation procedures on either due process or equal protection grounds are specifically foreclosed. Baldwin v. City of Winston-Salem, 544 F. Supp. 123 (M.D.N.C. 1982), aff'd, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Challenges to annexations generally are not actionable under U.S. Const., amend. XIV. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Statutory procedure referred to in subdivision (f) (1) is set out in § 160A-49. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Subsection (f) Amounts to Test of Reasonableness. — Subsection (f) of this section and the provisions incorporated therein, amount to a requirement that the superior court determine whether an annexation is reasonable. The language of the provisions does not speak in terms of arbitrariness, capriciousness or unreasonableness, but, the effect of the statute is to give substantial protection against arbitrary, capricious and unreasonable acts by the city. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Limited Scope, etc. —

The clear intent of the Legislature under this section was to provide an expedited judicial review, limited in scope, and avoiding unnecessary procedural delays. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

A separate test of the reasonableness of an annexation is not included within the limited scope of judicial review; however, subsection (f) of this section and the provisions incorporated therein amount to a requirement that the courts determine whether an annexation is reasonable. Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, — U.S. —, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

A court's review of an annexation ordinance is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioners "suffer material injury" by reason of the municipality's failure to comply? (3) Does the character of the area specified for annexation meet the requirement of § 160A-48 as applied to petitioners' property? In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

There is no test of reasonableness. —

On review of an annexation, a superior court may only hear claims based upon the grounds set out in subsection (f) of this section. There is no separate test of "reasonableness" within the limited scope of judicial review permitted in annexation cases. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.), cert. denied, — U.S. —, 104 S. Ct. 536, 78 L. Ed. 2d 716 (1983).

Record Must Show Prima, etc. —

Where the record of the annexation proceedings demonstrates prima facie substantial compliance with the applicable statutes, the burden is on the petitioner to show by competent evidence that the city has failed to meet the statutory requirements or that there was some irregularity in the proceedings that resulted in material prejudice to petitioners' rights. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The basic question presented by a petition for review under this section is whether the procedure followed in adopting the ordinance was in substantial compliance with the applicable statutes. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d

701, appeal dismissed, — U.S. —, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

Burden on Petitioners, etc. — Under subsection (f) of this section, a party challenging an annexation action of a governing body must show (1) that the statutory procedure was not followed, or (2) that the provisions of § 160A-47 were not met, or (3) that the provisions of § 160A-48 were not met. The party challenging the ordinance has the burden of showing error. Knight v. City of Wilmington, — N.C. App. —, 326 S.E.2d 376 (1985).

Slight irregularities will not invalidate, etc. — In accord with 2nd paragraph of original, see McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Adverse Effect upon Financial Interests, etc. — In accord with original. See Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

This section does not explicitly empower a superior court judge to remand an annexation ordinance upon a city's motion to exclude a landowner who originally was covered by it. Southern Glove Mfg. Co. v. City of Newton, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

Applicability of Rules of Civil Procedure. — Since judicial review of an annexation ordinance is manifestly a "proceeding of a civil nature," the Rules of Civil Procedure clearly apply to it, unless a different procedure is provided by statute, but only to the extent necessary to process the proceeding according to its nature. A different procedure for this proceeding from that provided in the Rules of Civil Procedure is provided to some extent by this section. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of § 160A-47, and as to the area involved being eligible for annexation under § 160A-48, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Power to Require Production of Evidence. — Absent an explicit statutory restriction to the contrary, a judge having the duty to receive evidence on and decide certain issues has the power, within his discretion, to require that evidence on those issues be produced. In the exercise of that power other factors require consideration, however, including the information already available through the documents required by subsection (c) of this section and the mandate contained in this section that these reviews be accomplished expeditiously and without unnecessary delays. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-53. Definitions.

CASE NOTES

Stated in Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984).

§ 160A-54. Population and land estimates.

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984).

Census figures are more reliable than any formula that alters the figures by arbitrarily assuming vacancy rates and adjusting for dwelling unit size. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App.

472, 311 S.E.2d 898 (1984).

This section contains no requirement regarding the use of final census data and there is no judicially imposed requirement. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Although this statute specifies the use of federal census data, it does not require the use of final rather than preliminary census data. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

§§ 160A-55, 160A-56: Repealed by Session Laws 1983, c. 636, s. 27, effective June 29, 1983.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

Local Modification. — (As to Part 4) Town of Dobbins Heights: 1983, c. 658.

§ 160A-58.1. Petition for annexation; standards.

Local Modification. — City of Mount Holly: 1985, c. 110; Town of Canton: 1983, c. 301.

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 160A-58.4. Extraterritorial powers.

Local Modification. — Town of Canton: 1983, c. 301.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-63. Vacancies.

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party. (R.C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C.S., ss. 2629, 2631; 1971, c. 698, s. 1; 1973, c. 426, s. 11; c. 827, s. 1.)

Local Modification. — City of Lumberton: 1983 (Reg. Sess., 1984), c. 1009.

Effect of Amendments. — The 1983 amendment, effective only for vacancies occurring on or after Jan. 1, 1984, rewrote the first sentence of the first paragraph, which formerly read "All vacancies that occur in any elective office of a city shall be filled by appointment of the city council for the remainder of the unexpired term," and added the present second, third, and fourth sentences of the first paragraph.

Part 3. Organization and Procedures of the Council.

§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats (not including the mayor unless he has the right to vote on all questions before the council). For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16; 1979, 2nd Sess., c. 1247, s. 7; 1983, c. 696.)

Local Modification. — Town of Elon College: 1985, c. 109.

Effect of Amendments. — The 1983 amendment, effective July 6, 1983, added the last sentence of the second paragraph.

Article 7.

Administrative Offices.

Part 2. Administration of Council-Manager Cities.

§ 160A-147. Appointment of city manager.

Local Modification. — (As to Part 2) Town of Elon College: 1985, c. 109.

Part 4. Personnel.

§ 160A-167. Defense of employees and officers; payment of judgments.

(a) Upon request made by or in behalf of any member or former member of the governing body of any authority, or any city, county, or authority employee or officer, or former employee or officer, or any member of a volunteer fire department or rescue squad which receives public funds, any city, authority, county or county alcoholic beverage control board may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city, authority, county or county alcoholic beverage control board. The defense may be provided by the city, authority, county or county alcoholic beverage control board by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city, authority, county or county alcoholic beverage control board to provide for the defense of any action or proceeding of any nature.

(b) Any city council or board of county commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an members or former members [a member or former member] of the governing body of any authority, or any city, county, or authority employee or officer of the city, authority, or county; provided, however, that nothing in this section shall authorize any city, authority, or county to appropriate funds for the purpose of paying any claim made or civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, or authority employees or officers or former employees or officers if the city council or board of county commissioners finds that such members or former members of the governing body of any authority, or any city, county, or authority employee or officer acted or failed to act because of actual fraud, corruption or actual malice on his part. Any city, authority, or county may purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any city, authority, or county to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) shall not authorize any city, authority, or county to pay all or part of a claim made or civil judgment entered unless (1) notice of the claim or litigation is given to the city council, authority governing board, or board of county commissioners as the case may be prior to the time that the claim is settled or civil judgment is entered, and (2) the city council, authority governing board, or board of county commissioners as the case may be shall have adopted, and made available for public inspection, uniform standards under which claims made or civil judgments entered against members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, shall be paid.

(d) For the purposes of this section, "authority" means an authority organized under Article 1 of Chapter 162A of the General Statutes, the North Carolina Water and Sewer Authorities Act. (1967, c. 1093; 1971, c. 698, s. 1; 1973, c. 426, s. 23; c. 1450; 1977, c. 307, s. 2; c. 834, s. 1; 1983, c. 525, ss. 1-4.)

Effect of Amendments. — The 1983 amendment, effective June 15, 1983, inserted "member or former member of the governing body of any authority, or any city, county, or authority" preceding "employee or officer, or former employee or officer" and "authority" following "city" in subsection (a); substituted "city, authority, or county" for "city or county" and inserted "members or former members of the governing body of any authority, or any city, county, or authority" preceding "employees or officers or former employees or officers" and preceding "employee or officer" in subsections (b) and (c); inserted "authority governing board" preceding "or board of county commissioners" and inserted "as the case may be" following "county commissioners" in subsection (c); and added subsection (d).

§ 160A-168. Privacy of employee personnel records.

CASE NOTES

Applied in Spell v. McDaniel, 591 F. Supp. 1090 (E.D.N.C. 1984).

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

CASE NOTES

I. IN GENERAL.

Through this section and § 160A-186 the legislature has delegated to the municipalities a part of its police power which may be exercised to protect or promote the health, morals, order, safety and general welfare of society. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Where town passed ordinance pursuant to its police power as provided under § 160A-186 and expressly stated that its purpose is to protect the health, safety and welfare of the town, review of validity of such ordinance will be to determine if the police power has been exercised within the constitutional limitations imposed by both the State and federal Constitutions. Such review will not include an analysis of the motives which prompted the passage of the ordinance because, so long as an act is not forbidden, the wisdom of the enactment is exclusively a legislative decision. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

III. OTHER SPECIFIC ORDINANCES.

Waste disposal is a recognized function of local government and a service consistent with governmental responsibility under the State's delegation of police power. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 160A-175. (Effective July 1, 1986) Enforcement of ordinances.

(a) A city shall have power to impose fines and penalties for violation of its ordinances, and may secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

§ 160A-175 has a delayed effective date. See notes for date.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) Subject to the express terms of the ordinance, a city ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(g) A city ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense. (1971, c. 698, s. 1; 1985, c. 764, s. 35.)

For this section as in effect until July 1, 1986, see the main volume.

Editor's Note. —

Session Laws 1985, c. 764, s. 40 provides that offenses committed before the effective date of the act (July 1, 1986) shall be governed by the law in effect at the time of the offense.

Effect of Amendments. — The 1985 amendment, effective July 1, 1986, and applicable to offenses committed on or after that date, substituted "is a misdemeanor or infraction" for "shall be a misdemeanor" in the first sentence of subsection (b), and in the second sentence of subsection (b) deleted "also" following "An ordinance may," substituted "fine, term of imprisonment, or infraction penalty" for "fine or term of imprisonment," substituted "a violation" for "its violation" and "is some amount of money" for "shall be some figure" thereafter, and substituted "maximum imposed" for "maximum penalties prescribed".

§ 160A-181. Regulation of places of amusement.

A city may by ordinance regulate places of amusement and entertainment, and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any

§ 160A-175 has a delayed effective date. See notes for date.

regulations thereof shall be consistent with any permits or licenses issued by the North Carolina Alcoholic Beverage Control Commission. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1981, c. 412, ss. 4, 5.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, ss. 4 and 5, "North Carolina Alcoholic Beverage Control Commission" has been substituted for "State Board of Alcoholic Control" in this section.

§ 160A-184. Noise regulation.

CASE NOTES

Applied in Jim Crockett Promotion, Inc. v. City of Charlotte, 706 F.2d 486 (4th Cir. 1983).

§ 160A-186. Regulation of domestic animals.

CASE NOTES

Through this section and § 160A-174 the legislature has delegated to the municipalities a part of its police power which may be exercised to protect or promote the health, morals, order, safety and general welfare of society. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Where town passed ordinance pursuant to its police power as provided under this section and expressly stated that its purpose is to protect the health, safety and welfare of the town, review of validity of such ordinance will be to determine if the police power has been exercised within the constitutional limitations imposed by both the State and federal Constitutions. Such review will not include an analysis of the motives which prompted the passage of this ordinance because, so long as an act is not forbidden, the wisdom of the enactment is exclusively a legislative decision. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

§ 160A-191. Limitations on enactment of Sunday-closing ordinances.

No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18B-1004(d). (1967, c. 1156, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 27; 1983, c. 768, s. 22.)

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted "G.S. 18B-1004(d)" for "G.S. 18A-33(b)" in the last sentence. The amendment directed that "G.S. 18B-1004(d)" be substituted for "G.S. 160A-191" but the intent was clearly to substitute the reference for "G.S. 18A-33(b)."

§ 160A-192. Regulation of trash and garbage.

CASE NOTES

The city is required by law to provide waste disposal services on substantially the same basis and in the same manner as such services are provided within the municipality prior to annexation. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

§ 160A-195. Regulating speed of trains.

A city may by ordinance regulate the speed at which railroad trains may be operated within the corporate limits. Any such ordinance shall be filed with the Utilities Commission as required by G.S. 62-238.l. (1973, c. 426, s. 28; 1985, c. 662, s. 3.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, added the second sentence.

§ 160A-196. Sewage tie-ons.

Cities that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean and Pamlico Sound may by ordinance regulate the tie-ons to sewage systems within their corporate limits. (1985, c. 525, s. 1.)

Editor's Note. — Session Laws 1985, c. 525, s. 4 makes this section effective July 1, 1985.

§§ 160A-197 to 160A-205: Reserved for future codification purposes.

Article 9.

Taxation.

§ 160A-209. Property taxes.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

(1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.

(2) Air Pollution. — To maintain and administer air pollution control programs.

(3) Airports. — To establish and maintain airports and related aeronautical facilities.

(4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(5) Animal Protection and Control. — To provide animal protection and control programs.

(5a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.
(6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.
(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.
(8) Cemeteries. — To provide for cemeteries.
(9) Civil Defense. — To provide for civil defense programs.
(9a) Community Development. — To provide for community development as authorized by G.S. 160A-456 and 160A-457.
(10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.
(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.
(10c) Drainage. — To provide for drainage projects or programs in accordance with Chapter 156 of the General Statutes or in accordance with this Chapter.
(11) Elections. — To provide for all city elections and referendums.
(12) Electric Power. — To provide electric power generation, transmission, and distribution services.
(13) Fire Protection. — To provide fire protection services and fire prevention programs.
(14) Gas. — To provide natural gas transmission and distribution services.
(15) Historic Preservation. — To undertake historic preservation programs and projects.
(16) Human Relations. — To undertake human relations programs.
(17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.
(17a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.
(18) Jails. — To provide for the operation of a jail and other local confinement facilities.
(19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
(20) Libraries. — To establish and maintain public libraries.
(21) Mosquito Control.
(22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
(24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.
(26) Police. — To provide for law enforcement.
(27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.

(27a) Senior Citizens Programs. — To undertake programs for the assistance and care of its senior citizens.

(28) Sewage. — To provide sewage collection and treatment services as defined in G.S. 160A-311(3).

(29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.

(31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.

(31a) Urban Redevelopment. — To provide for urban redevelopment.

(32) Water. — To provide water supply and distribution services.

(33) Water Resources. — To participate in federal water resources development projects.

(34) Watershed Improvement. — To undertake watershed improvement projects.

(1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C.S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7; 1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5; 1979, 2nd Sess., c. 1247, s. 21; 1981, c. 66, s. 1; 1983, c. 511, ss. 3, 4; c. 828; 1985, c. 665, ss. 4, 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; village of Clemmons: 1985, c. 437, s. 7.

Effect of Amendments. —

The first 1983 amendment, effective June 13, 1983, added subdivisions (c)(10b) and (c)(17a).

The second 1983 amendment, effective July 19, 1983, added subdivision (c)(10c).

The 1985 amendment, effective July 9, 1985, inserted subdivisions (9a) and (31a).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 160A-211.1. Privilege license tax on low-level radioactive and hazardous wastes facilities.

(a) Cities in which hazardous waste facilities as defined in G.S. 130A-290(5) or low-level radioactive waste facilities as defined in 104E-7(9b) [104E-5(9b)] are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(1981, c. 704, s. 15; 1985, c. 462, s. 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, substituted "G.S. 130A-290(5)" for "G.S. 130-166.16(5)" in subsection (a).

Article 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.

Local Modification. — (As to Art. 10) City of Southport: 1983, c. 659; city of Washington: 1983 (Reg. Sess., 1984), c. 951; town of Apex: 1985, c. 356; town of Elon College: 1985, c. 109; town of Marietta: 1985, c. 111; town of Wendell: 1985, c. 107.

Cross References. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

CASE NOTES

Applied in Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-218. Basis for making assessments.

CASE NOTES

Decisions as to Benefits to Property Are Final. — The decisions of the city council as to the method of assessment and the total cost of an improvement are final and conclusive and not subject to further review or challenge. This includes decisions as to whether and how much a property is benefitted by the improvements. In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-226. Determination of costs.

CASE NOTES

Decisions as to Benefits to Property Are Final. — The decisions of the city council as to the method of assessment and the total cost of an improvement are final and conclusive and not subject to further review or challenge. This includes decisions as to whether and how much a property is benefitted by the improvements. In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-226.1. Discounts authorized.

The council is authorized to establish a schedule of discounts to be applied to assessments paid before the expiration of 30 days from the date that notice is published of confirmation of the assessment roll pursuant to G.S. 160A-229. Such a schedule of discounts may be established even though it was not included among the terms of payment as specified in the preliminary assessment resolution or assessment resolution. The amount of any discount may not exceed thirty percent (30%). (1983, c. 381, s. 4.)

Editor's Note. — Session Laws 1983, c. 381, s. 7, makes this section effective upon ratification and applicable to any project for which the preliminary assessment roll is prepared after the effective date. The act was ratified May 24, 1983.

CASE NOTES

Applied in In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-227. Preliminary assessment roll; publication.

When the total cost of a project has been determined, the council shall have a preliminary assessment roll prepared. The preliminary roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each parcel of land as far as this can be ascertained from the county tax records. A map of the project on which is shown each parcel assessed with the basis of its assessment, the amount assessed against it, and the name of the owner, as far as this can be ascertained from the county tax records, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the city clerk's office where it shall be available for public inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the clerk's office for inspection, and stating the time and place for a hearing on the preliminary assessment roll, shall be published at least 10 days before the date set for the hearing on the preliminary assessment roll. The council shall also cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed thereon at least 10 days before the hearing. The notice mailed to each property owner shall give notice of the time and place of the hearing, shall note the availability of the preliminary assessment roll for inspection in the city clerk's office and shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person designated to mail these notices shall file with the council a certificate showing they were mailed by first-class mail and on what date. Such a certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1915, c. 56, s. 9; C.S., s. 2712; 1971, c. 698, s. 1; 1983, c. 381, s. 5.)

Editor's Note. — Session Laws 1983, c. 381, s. 7, makes the act effective upon ratification and applicable to any project for which the preliminary assessment roll is prepared after the effective date. The act was ratified May 24, 1983.

Effect of Amendments. — The 1983 amendment, effective May 24, 1983, inserted "including the schedule of discounts, if such a schedule is to be established" in the second sentence.

§ 160A-229. Publication of notice of confirmation of assessment roll.

After the expiration of 20 days from the confirmation of the assessment roll, the city tax collector shall publish once a notice that the assessment roll has been confirmed, and that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published, and that if they are not paid within this time, all installments thereof shall bear interest as provided in G.S. 160A-233. The notice shall also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest. (1971, c. 698, s. 1; 1983, c. 381, s. 6.)

Editor's Note. — Session Laws 1983, c. 381, s. 7, makes the act effective upon ratification and applicable to any project for which the preliminary assessment roll is prepared after the effective date. The act was ratified May 24, 1983.

Effect of Amendments. — The 1983 amendment, effective May 24, 1983, added the last sentence.

§ 160A-230. Appeal to General Court of Justice.

CASE NOTES

Jurisdiction of Court Is Derivative. — Original jurisdiction to determine questions of fact involved in assessment proceedings is derived from the General Assembly and vested in the city council. Since a property owner's right of appeal from the city council to the courts is created and governed by statute, the jurisdiction acquired is derivative. On appeal to the courts, the owner of assessed property has no right to be heard there on the question of whether the lands are benefitted or not, but only on the validity of the assessment, its proper apportionment and other questions of law. In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

Superior court may not determine de novo questions within the city council's original jurisdiction. In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

The language providing that appeals "shall be tried as other actions at law," serves merely to distinguish those actions from special proceedings for purposes of determining the applicable procedural rules. In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985).

§ 160A-233. Enforcement of assessments; interests; foreclosure; limitations.

Local Modification. — Town of Madison: 1985, c. 91.

CASE NOTES

Cited in City of Durham v. Herndon, 61 N.C. App. 275, 300 S.E.2d 460 (1983).

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works.

Local Modification. — Town of Holden Beach: 1983, c. 490; town of Sunset Beach: 1985, c. 725.

Article 11.

Eminent Domain.

§ 160A-240.1. Power to acquire property.

A city may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the city or any department, board, commission or agency of the city. In exercising the power of eminent domain a city shall use the procedures of Chapter 40A. (1981, c. 919, s. 29; 1983, c. 768, s. 23.)

Local Modification. — City of Monroe: 1985, c. 177.

Effect of Amendments. — The 1983 amendment, effective July 15, 1983, substituted "for use by" for "or use by" in the first sentence.

Article 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Clay: 1983, c. 353; Cumberland: 1983 (Reg. Sess., 1984), c. 1079; Craven: 1985, c. 13; Gaston: 1983, c. 796; Harnett: 1985, c. 16; Jones: 1983 (Reg. Sess., 1984), c. 960; Pamlico: 1985, c. 386; Pitt: 1983 (Reg. Sess., 1984), c. 942; city of Asheville: 1985, c. 721; city of Brevard: 1985, c. 79; city of Lenoir: 1985, c. 493; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Mount Airy: 1985, c. 282; city of Washington: 1983 (Reg. Sess., 1984), c. 941; City of Wilson: 1983, c. 748; town of Black Creek: 1985, c. 286; town of Greenevers: 1985, c. 34; town of Lake Lure: 1985, c. 105; town of Pilot Mountain: 1985, c. 291, ss. 6, 8; town of Wake Forest: 1985, c. 195.

Editor's Note. — Section 160A-265 is the first section of Article 12 of this Chapter. It was inadvertently placed as the last section of Article 11 of this Chapter in the 1982 Replacement Volume.

CASE NOTES

Applied in Watts v. Town of Valdese, 65 N.C. App. 822, 310 S.E.2d 152 (1984).

§ 160A-266. Methods of sale; limitation.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than five thousand dollars ($5,000) for any one item or group of similar items. Real property and personal property valued at five thousand dollars ($5,000) or more for any one item or group of similar items may be sold by any method permitted by this Article other than private negotiation and sale, or may be exchanged as permitted by G.S. 160A-271.

Provided, however, a city may dispose of real property and personal property valued at five thousand dollars ($5,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than five hundred dollars ($500.00) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently

and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than five hundred dollars ($500.00) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange since the last such report was submitted. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Cherokee: 1983 (Reg. Sess., 1984), c. 939; Gaston: 1983, c. 405; Washington: 1985, c. 134.

Effect of Amendments. — The first 1983 amendment, effective April 1, 1983, added subsection (c).

The second 1983 amendment, effective June 7, 1983, added the second paragraph of subsection (b).

§ 160A-272. Lease or rental of property.

Local Modification. — Lincoln: 1983 (Reg. Sess., 1984), c. 944; Wilson: 1983, c. 239; city of Charlotte: 1985, c. 388; city of Concord: 1985, c. 355; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; town of Hope Mills: 1985, c. 285.

CASE NOTES

A municipal corporation has a twofold character and dual powers. The one is variously designated as public, governmental, political or legislative, in which the municipal corporation acts as an agency of the State. The other is variously designated as municipal, private, quasi-private, or proprietary. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 310 (1983).

This section empowers a city to lease or rent any property owned by the city for such terms and upon such conditions as the council may determine. This power is to be exercised by the governing body of the municipality acting in its proprietary, rather than its governmental capacity. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 310 (1983).

The city's proprietary or corporate power to contract for the leasing of its property is limited. It cannot be exercised so as to disadvantageously affect the governing body's governmental powers. The true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 310 (1983).

Applied in National Medical Enters., Inc. v. Sandrock, — N.C. App. —, 324 S.E.2d 268 (1985).

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

Local Modification. — Hertford County Board of Education: 1985, c. 123.

Article 13.

Law Enforcement.

§ 160A-286. Extraterritorial jurisdiction of policemen.

Local Modification. — Sampson: 1985, c. 292; city of Clinton: 1985, c. 292, s. 1; town of Norwood: 1983, c. 91; town of Pittsboro: 1983, c. 348.

By virtue of Session Laws 1983, c. 260, village of Pinehurst should be stricken from the replacement volume.

CASE NOTES

This section extends the extraterritorial power of city police officers beyond the mere power to arrest found in subsection (c) of § 15A-402. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

This section and § 15A-402 must be analyzed to determine what area the territorial jurisdiction of a municipal law-enforcement officer actually encompasses. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

Where police officer is acting within his territorial jurisdiction the defendant has no right to resist, delay, or obstruct a search being conducted pursuant to a warrant. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

Stated in State v. Proctor, 62 N.C. App. 233, 302 S.E.2d 812 (1983).

Article 14.

Fire Protection.

§ 160A-291. Firemen appointed.

CASE NOTES

City Not Required to Provide Fire Protection. — While a city is allowed to provide fire protection as a municipal service, it is not required by statute to provide such protection or to pay another for the provision of fire protection. Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

Liability of City for Hydrant Fees. — Even absent statutory or express contractual liability to pay another for fire protection, justice and equity require a city to pay fire hydrant fees to a water and sewer authority where the authority intended to maintain hydrants for the city's use, the city granted a 60-year franchise to the authority to install and maintain hydrants, free service was explicitly proscribed, the city knew of the hydrant charges, and the city paid such charges until the rate was increased. The law implies a promise by the city to pay for such service. Otherwise, it would be unjustly enriched at the expense of the authority. Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

§ 160A-294. Loss of rural fire employment.

(a) Whenever a city annexes any territory under Parts 2 or 3 of Article 4A of this Chapter, and because of the annexation the rural fire department must terminate the employment of any full-time employee, then the annexing city must take one of the three actions listed below with respect to any person who has been in such full-time employment for two years or more at the time of adoption of the resolution of intent:

(1) The annexing city may offer employment without loss of salary or seniority and place the person in a position as near as possible in type to the position that was held in the rural fire department; or

(2) The annexing city may offer employment in some other department of the city at a comparable salary and seniority; or

(3) The city may choose to pay to the person a sum equal to the person's salary for one year as the equivalent of severance pay. For the purpose of this subsection, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of consideration was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions; provided that if no resolution of consideration was required to be adopted because of either G.S. 160A-37(j) or G.S. 160A-49(j), or because the resolution of intent was adopted prior to July 1, 1984, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of intent was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions.

(b) This section is effective with respect to all annexations where an annexation ordinance is adopted on or after January 1, 1983, except that it is also effective with respect to all annexations where an annexation ordinance was adopted before January 1, 1983, but on January 1, 1983, the annexation ordinance:

(1) Was under review under G.S. 160A-38 or G.S. 160A-50, and a stay is in effect under G.S. 160A-38(e) or G.S. 160A-50(e); or

(2) Was subject to the Voting Rights Act of 1965 but had not yet been approved under that act. (1983, c. 636, s. 25.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Article 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

Local Modification. — City of Monroe: 1985, c. 177.

CASE NOTES

III. DUTY TO KEEP STREETS, ETC., FREE FROM OBSTRUCTIONS.

Unlike § 160A-298, subdivision (a)(2) of this section creates an affirmative duty of care. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

"Obstruction". — An "obstruction" can be anything, including vegetation, which renders the public passageway less convenient or safe for use. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

§ 160A-298. Railroad crossings.

CASE NOTES

Exercise of control over railroad crossings is within a municipality's inherent police power. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Authority under This Section Does Not Constitute Duty. — The fact that a city has the authority to make certain decisions does not mean that the city is under an obligation to do so. The words "authority" and "power" are not synonymous with the word "duty". When the Legislature intended to create a duty in this Chapter, it did so expressly. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Section allows a city to exercise its discretion in requiring improvements at railroad crossings. There is no mandate of action. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

And Courts Will Not Interfere Absent Abuse of Discretion. — Courts will not interfere with discretionary powers conferred on a municipality for the public welfare unless the exercise (or nonexercise) of those powers is so clearly unreasonable as to constitute an abuse of discretion. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Unlike this section, § 160A-296(2) does create an affirmative duty of care. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

§ 160A-299. Procedure for permanently closing streets and alleys.

Local Modification. — City of Durham: 1985, c. 332.

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
a. Provide by contract or ordinance for a schedule of reasonable towing fees,
b. Provide a procedure for a prompt fair hearing to contest the towing,
c. Provide for an appeal to district court from that hearing,
d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983.
(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983.
(1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Town of Carrboro: 1983, c. 730.

Effect of Amendments. — The 1983 amendment, effective July 1, 1983, substituted the last sentence of subsection (c) for the former last four sentences, rewrote subsection (d), and deleted subsections (e) and (h).

§ 160A-304. Regulation of taxis.

(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city. The ordinances may also specify the types of taxicab services which are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:
(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
(4) Violation of any federal or State law relating to prostitution;
(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identi-

fying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1; 1981, c. 412, s. 4; c. 606, s. 5; c. 747, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, and Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in this section.

Article 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

Local Modification. — Village of Pinehurst: 1985, c. 379, s. 3.

CASE NOTES

Applied in State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

§ 160A-312. Authority to operate public enterprises.

CASE NOTES

I. IN GENERAL.

The clause "subject to part 2 of this article" refers to those situations where a city extending its electric lines outside its corporate limits necessarily begins construction within its corporate limits. When a city extending service outside its corporate limits constructs lines beginning at some point within its corporate limits, then pursuant to this section and § 160A-332, such lines as are within the city limits may not infringe on the guaranteed corridor rights of a secondary supplier. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Under current legislation, the absolute right of a secondary supplier to serve customers within its 300-foot corridor arises upon the effective date of annexation, statutorily defined as the "determination date." If the Legislature determines that the corridor rights of a secondary supplier deserve protection before the effective date of annexation, then it can guarantee such rights by defining the "determination date" when such rights arise as the date an annexation ordinance is adopted rather than the date an annexation plan is effected. Unless and until such time arises, the supreme court precedent in relying solely on this section in determining whether a city has legislative authority to extend its lines will be followed. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The first sentence of this section grants a city absolute authority without limitation or restriction to provide electric service for the benefit of the city itself and its citizens. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

This section does not affect a city's right to furnish electric service to a newly annexed territory within its corporate limits. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

A city's rights under this section are not subject to the provisions of §§ 160A-331 to 160A-338. Duke Power Co. v. City of High

Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Applied in State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983); Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 699 (1984); Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Cited in Lumbee River Elec. Membership Corp. v. City of Fayetteville, 60 N.C. App. 534, 299 S.E.2d 305 (1983).

CASE NOTES

II. EXTENSION OF SERVICES OUTSIDE CORPORATE LIMITS.

The term "reasonable limitations." — In accord with original. See Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

This section provides the sole authority for and restriction upon municipalities furnishing electric service outside corporate limits. State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984); Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

This section vests municipalities with a right to serve potential new customers outside its corporate limits so long as this extension of service is within reasonable limitations. State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

Operation of Electric System Outside Municipality. — The 1965 Electric Act, appearing in §§ 160A-331 through 160A-338 and § 62-110.2, does not empower or authorize municipalities to operate electric systems outside corporate limits, nor does it restrict such service. Insofar as the General Statutes are concerned, the sole authority for, and the only restriction upon municipalities furnishing electric service outside corporate limits is found in this section. Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983).

For analysis of the dichotomy between a city's rights to extend electric service outside city limits under this section and its rights to extend such service within city limits under §§ 160A-331 to 160A-338, see Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

§ 160A-314. Authority to fix and enforce rates.

Local Modification. — City of Reidsville: 1983, c. 125.

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on taxation, see 61 N.C.L. Rev. 1217 (1983).

CASE NOTES

No License to Discriminate. —

A public utility, whether publicly or privately owned, may not discriminate in the distribution of services or the establishment of rates. There must be substantial differences in service or conditions to justify differences in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Ordinance Held Unenforceable against City. — A county ordinance providing that no fees could be charged residents of the county or franchise haulers by the owners or operators of a sanitary landfill located within the county was improper, because it based fees upon the wrong criteria (residence rather than kind and degree of service) in violation of this section. Therefore, the county could not enforce the ordinance against city which operated a sanitary landfill in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 312 S.E.2d 476 (1984).

Part 2. Electric Service in Urban Areas.

§ 160A-331. Definitions.

CASE NOTES

Legislative Intent. — By defining and restricting the rights of competing electric companies, the Legislature, in the 1965 Electric Act, limited free competition among private electric suppliers in rural areas. It is for the Legislature, not for the court to determine whether legislation other than § 160A-312 is needed to curtail the competitive rights of municipal electric suppliers in rural areas. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The Territorial Assignment Act of 1965, as codified at § 62-110.2 and §§ 160A-331 to 160A-338, represents an attempt to eliminate the uneconomic duplication of transmission and distribution systems bred of unbridled competition between public utilities, electric membership corporations and municipalities by designating the various competitors' rights. Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Municipality as "Secondary Supplier." — A town, a municipal corporation, is a "person" or "corporation" within the meaning of subdivision (5) of this section and therefore qualifies as a "secondary supplier." Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Applicability of Provisions to Municipality. — A municipality operating an electric service within the corporate limits of another municipality is subject to the provisions of §§ 160A-331 to 160A-338. Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

The clause "subject to part 2 of this article," as used in § 160A-312 refers to those situations where a city extending its electric lines outside its corporate limits necessarily begins construction within its corporate limits. When a city extending service outside its corporate limits constructs lines beginning at some point within its corporate limits, then pursuant to §§ 160A-312 and 160A-332, such lines as are within the city limits may not infringe on the guaranteed corridor rights of a secondary supplier. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The furnishing of electric service to an area subsequently annexed must be carried out pursuant to the 1965 Electric Act (§§ 160A-331 to 160A-338 and 62-110.1 to 62-110.2). State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

Operation of Electric System Outside Municipality. — The 1965 Electric Act, appearing in §§ 160A-331 through 160A-338 and § 62-110.2, does not empower or authorize municipalities to operate electric systems outside corporate limits, nor does it restrict such service. Insofar as the General Statutes are concerned, the sole authority for, and the only restriction upon municipalities furnishing electric service outside corporate limits is found in § 160A-312. Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983).

Nothing in this Part empowers or restricts municipalities in the operation of their electric systems outside their corporate limits. State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

For analysis of the dichotomy between a city's rights to extend electric service outside city limits under § 160A-312 and its rights to extend such service within city limits under §§ 160A-331 to 160A-338, see Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Section 160A-312 does not affect a city's right to furnish electric service to a newly annexed territory within its corporate limits, such right being determined solely by the provisions of §§ 160A-331 to 160A-338. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Applied in State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983).

§ 160A-332. Electric service within city limits.

CASE NOTES

Legislative Intent. — By defining and restricting the rights of competing electric companies, the Legislature in the 1965 Electric Act, limited free competition among private electric suppliers in rural areas. It is for the Legislature, not for the court to determine whether legislation other than § 160A-312 is needed to curtail the competitive rights of municipal electric suppliers in rural areas. Duke Power Co. v. City of High Point, 69 N.C. App.

378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Applied in Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

§ 160A-334. Authority and jurisdiction of Utilities Commission.

CASE NOTES

Applied in Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Article 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — (As to Article 19) town of Knightdale: 1985, c. 564; village of Pinehurst: 1985, c. 379, s. 4; village of Sugar Mountain: 1985, c. 395. (As to § 160A-360) town of Aberdeen: 1985, c. 308; town of Huntersville: 1983 (Reg. Sess., 1984), c. 966; town of Nashville: 1985, c. 217; town of Southern Pines: 1985, c. 308; town of Wake Forest: 1985, c. 196; town of Warsaw: 1985, c. 5; village of Pinehurst: 1985, c. 308.

§ 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency or agencies provide a means of representation for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing residents of the area to the planning agency and the board of adjustment that makes recommendations or grants relief in these matters. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning agency and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the agency to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; 1983, c. 584, ss. 1-4.)

Effect of Amendments. — The 1983 amendment, effective Sept. 1, 1983, deleted the former second and third sentences, relating to an advisory board, at the beginning of the present second sentence substituted "Representation shall" for "In lieu of an advisory board, representation may," added the present third sentence, and in the present fourth sentence deleted "members of the advisory board or" following "The."

§ 160A-363. Supplemental powers.

A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1983, c. 377, s. 9.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, inserted "and compensate members of" in the third paragraph.

Part 2. Subdivision Regulation.

§ 160A-371. Subdivision regulation.

CASE NOTES

Conditions on Approval of Subdivision Plan. — Merely changing the location of a recreation area as a condition of approval of a subdivision plan does not amount to a taking so as to require compensation and is a valid exercise of a municipality's police power under § 160A-372. Messer v. Town of Chapel Hill, 59 N.C. App. 692, 297 S.E.2d 632 (1982), cert. denied and appeal dismissed, 307 N.C. 697, 301 S.E.2d 390 (1983).

Cited in Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740 (1984).

§ 160A-372. Contents and requirements of ordinance.

A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas

serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning agency. In order for this authorization to become effective, before approving such plans the council or planning agency and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning agency shall immediately notify the board of education and the board shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning agency and no site shall be reserved. If the board does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served. (1955, c. 1334, s.1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59; 1985, c. 146, ss. 1, 2.)

Effect of Amendments. — The 1985 amendment, effective May 2, 1985, inserted "or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area" near the middle of the first sentence of the first paragraph and added the last paragraph.

CASE NOTES

Conditions on Approval of Subdivision Plan. — Merely changing the location of a recreation area as a condition of approval of a subdivision plan does not amount to a taking so as to require compensation and is a valid exercise of a municipality's police power under this section. Messer v. Town of Chapel Hill, 59 N.C. App. 692, 297 S.E.2d 632 (1982), cert. denied and appeal dismissed, 307 N.C. 697, 301 S.E.2d 390 (1983).

Cited in Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740 (1984).

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Local Modification. — City of Raleigh: 1985, c. 498, s. 3.

§ 160A-374. Effect of plat approval on dedications.

The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision-regulation jurisdiction but outside the corporate limits of a city shall not place on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or facility, and a city shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits. Unless a city, county or other public entity operating a water system shall have agreed to begin operation and maintenance of the water system or water system facilities within one year of the time of issuance of a certificate of occupancy for the first unit of housing in the subdivision, a city or county shall not, as part of its subdivision regulation applied to facilities or land outside the corporate limits of a city, require dedication of water systems or facilities as a condition for subdivision approval. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1983 (Reg. Sess., 1984), c. 1080; 1985, c. 635.)

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective October 1, 1984, added the last sentence.

The 1985 amendment, effective July 5, 1985, in the last sentence substituted "Unless a city, county or other public entity operating a water system" for "Unless the city," inserted "or county" preceding "shall not, as part of," and substituted "the corporate limits of a city" for "the corporate limits of the city."

§ 160A-375. Penalties for transferring lots in unapproved subdivisions.

CASE NOTES

This section does not provide a town with a means of having conveyances declared void and without force and effect. Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740, rehearing granted, 312 N.C. 491, 322 S.E.2d 565 (1984).

Part 3. Zoning.

§ 160A-381. Grant of power.

For the purpose of promoting health, safety, morals, or the general welfare of the community, any city is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1.)

Local Modification. — Town of Wrightsville Beach: 1985, c. 605.

Editor's Note. — Session Laws 1985, c. 442, s. 3 makes the act effective upon ratification, but provides that it does not affect pending litigation. The act was ratified June 21, 1985.

Effect of Amendments. —

The 1985 amendment, effective June 21, 1985, added the last two sentences.

Legal Periodicals. —

For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761.

For comment discussing aesthetic zoning in North Carolina in light of State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982), see 61 N.C.L. Rev. 942 (1983).

CASE NOTES

VII. Certiorari.

I. IN GENERAL.

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

Stated in Town of Kenansville v. Summerlin, — N.C. App. —, 320 S.E.2d 428 (1984).

II. POWER TO ZONE.

The original zoning power, etc. — Rezoning must be effected by the exercise of legislative power rather than by special arrangements with the owner of a particular tract or parcel of land. Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

V. CONDITIONAL OR SPECIAL USE PERMITS.

Safeguards against arbitrary, etc. — In passing upon an application for a special permit, a town council may not violate at will the regulations it has established for its own procedure; it must comply with the provisions of the applicable ordinance. This requirement is necessary in order to accord due process and equal protection to applicants and to refute charges that any denial is an arbitrary discrimination against the property owner. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

When a town council conducts a quasi-judicial hearing to determine facts prerequisite to issuance of a permit, it can dispense with no essential element of a fair trial. The applicant must have the opportunity to give evidence, cross-examine witnesses, and inspect documents; and unsworn statements may not be used to support findings absent waiver or stipulation. In allowing or denying the application, the council must state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

Time for Review of Adverse Decision. — This section, and not § 160A-388(e), grants applicants the right to petition the superior court for a writ of certiorari from an adverse decision of the board of aldermen. The significance of the right to apply for certiorari under the one statute as opposed to the other is that although § 160A-388(e) stipulates a 30 day time limit during which petition for certiorari must be filed, this section contains no such limitation. However, even in the absence of any statutory time limit, it appears that certiorari must be filed within a reasonable time. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

The same procedures should be followed when seeking review of adverse decisions on application for conditional use permits, whether delivered by a board of aldermen or a board of adjustment. In the absence of a specified time for applying for certiorari from a board of aldermen which is different from that allowed for appeal from a board of adjustment, the reasonable conclusion is that the time limit is the same for both. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

VI. BUILDING PERMITS.

An ordinance which classifies mobile homes differently from modular and site-built homes is valid. The protection of property values in the zoned area is a legitimate governmental objective, and the method of construction of homes may be determined by a city governing board as affecting the price of homes. The prohibition of such buildings is rationally related to the protection of the value of other homes in the area. Duggins v. Town of Walnut Cove, 63 N.C. App. 684, 306 S.E.2d 186, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983), appeal dismissed, — U.S. —, 104 S. Ct. 2145, 80 L. Ed. 2d 532 (1984).

A town is clearly authorized by this section to regulate and restrict the location and use of any buildings or structures for residential and other purposes, including restricting the location of mobile homes. Duggins v. Town of Walnut Cove, 63 N.C. App. 684, 306 S.E.2d 186, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983), appeal dismissed, — U.S. —, 104 S. Ct. 2145, 80 L.Ed. 2d 532 (1984).

VII. CERTIORARI.

Timeliness of Certiorari Petition Is Determined by Superior Court. — Had the Legislature intended this section to contain a 30-day limit, it would have included one in the statute. As such a limit is not present in this section, the Supreme Court, must assume the Legislature intended to leave determination of the timeliness of a petition for certiorari to the superior court in which the petition is filed. White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

Timeliness Depends on Circumstances. — In the absence of a designated time period within which to seek review of a decision by a board of aldermen, the superior court must determine, in its discretion, whether a petition for writ of certiorari has been filed within a reasonable time of the decision of the board of aldermen. What is a reasonable time must, in all cases, depend upon the circumstances. White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

Timeliness Decided under Equitable Doctrine of Laches. — Generally, whether a petition for certiorari has been timely filed can be decided by determining whether the petitioner's delay bars him under the equitable doctrine of laches from being afforded review. White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

Section 160A-388(e) Compared. — As with this section, § 160A-388(e) provides that "[e]very decision of the board [of adjustment] shall be subject to review by the superior court by proceedings in the nature of certiorari." Unlike this section, however, § 160A-388(e) adds that "[a]ny petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board [of adjustment] is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party ... whichever is later." White Oak Properties, Inc. v. Town of Carrboro, — N.C. —, 327 S.E.2d 882 (1985).

§ 160A-382. Districts.

For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit. Property may be placed in a special use district or conditional use district only in response to a petition by the owners of all the property to be included. Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1923, c. 250, s. 2; C.S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1985, c. 607, s. 1.)

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, inserted the present second and third sentences and inserted "Except as authorized by the foregoing" at the beginning of the last sentence.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-383. Purposes in view.

Legal Periodicals. —

For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761.

For article discussing a practical interpretation of North Carolina's comprehensive plan requirement for zoning regulations, see 7 Campbell L. Rev. 1 (1984).

CASE NOTES

Applied in Goforth Properties, Inc. v. Town of Chapel Hill, — N.C. App. —, 323 S.E.2d 427 (1984).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-384. Method of procedure.

The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, and applicable only when tax maps are available for the areas to be zoned, added the last two sentences.

CASE NOTES

Stated in Town of Kenansville v. Summerlin, 70 N.C. App. 601, 320 S.E.2d 428 (1984).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-385. Changes.

(a) Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three fourths of all the members of the city council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to lots for which building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7; 1985, c. 540, s. 2.)

Local Modification. — City of Charlotte: 1983 (Reg. Sess., 1984), c. 955; City of Gastonia: 1983, c. 176.

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, designated the first paragraph as subsection (a) and added subsection (b).

CASE NOTES

I. IN GENERAL.

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-386. Protest petition; form; requirements; time for filing.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-387. Planning agency; zoning plan; certification to city council.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-388. Board of adjustment.

(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. A city may designate a planning agency to perform any or all of the duties of a board of adjustment in addition to its other duties.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — City of Hendersonville: 1983, c. 161; city of Wilmington: 1983, c. 366.

Effect of Amendments. —

The 1985 amendment by c. 397, s. 2, effective June 14, 1985, inserted "any or all of" preceding "the duties" in the last sentence of subsection (a).

The 1985 amendment by c. 689, s. 30, effective July 11, 1985, substituted "board" for "court" at the end of subsection (f).

CASE NOTES

I. IN GENERAL.

Applied in Martin Marietta Corp. v. Forsyth County Zoning Bd. of Adjustment, 65 N.C. App. 316, 309 S.E.2d 523 (1983); In re Dunn, — N.C. App. —, 326 S.E.2d 309 (1985); Farr v. Board of Adjustment, — N.C. App. —, 326 S.E.2d 382 (1985).

Stated in Town of Kenansville v. Summerlin, 70 N.C. App. 601, 320 S.E.2d 428 (1984).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

II. JUDICIAL REVIEW.

Who May Appeal, etc. —

An order of a board of adjustment which exceeds its authority under the zoning ordinance may be appealed by nearby landowners who will sustain special damage from the proposed use. Heery v. Town of Highlands Zoning Bd. of Adjustment, 61 N.C. App. 612, 300 S.E.2d 869 (1983).

In order to seek review of board of adjustment decisions made under zoning ordinances, petitioners must be aggrieved persons within the meaning of this section. This means only that the appealing party must have some interest in the property affected. However, the "property affected" is not limited to the property subject to the special use permit. Heery v. Town of Highlands Zoning Bd. of Adjustment, 61 N.C. App. 612, 300 S.E.2d 869 (1983).

Adverse Decision of Board of Aldermen. — Section 160A-381, and not subsection (e) of this section, grants applicants the right to petition the superior court for writ of certiorari from adverse decisions of boards of aldermen. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

The same procedures should be followed when seeking review of adverse decisions on application for conditional use permits, whether delivered by a board of aldermen or a board of adjustment. In the absence of a specified time for applying for certiorari from a board of aldermen which is different from that allowed for appeal from a board of adjustment, the reasonable conclusion is that the time limit is the same for both. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984).

An aggrieved person in a zoning proceeding must own the affected property or have some interest in it. Wil-Hol Corp. v. Marshall, 71 N.C. App. 611, 322 S.E.2d 655 (1984).

Collateral Attack, etc. —

A zoning ordinance could not be collaterally attacked by a party that failed to avail herself of the judicial review that the ordinance and statutes authorized. Wil-Hol Corp. v. Marshall, 71 N.C. App. 611, 322 S.E.2d 655 (1984).

§ 160A-389. Remedies.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Town of Nags Head v. Tillett, — N.C. App. —, 315 S.E.2d 740 (1984).

§ 160A-390. Conflict with other laws.

CASE NOTES

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-391. Other statutes not repealed.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.

All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State. (1951, c. 1203, s. 1; 1971, c. 698, s. 1; 1985, c. 607, s. 2.)

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, added the second paragraph.

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

Part 3A. Historic Districts.

§ 160A-395. Exercise of powers under this Part by counties as well as cities; designation of historic districts.

Legal Periodicals. —
For survey of 1982 law on property, see 61 N.C.L. Rev. 1171 (1983).

§ 160A-397. Certificate of appropriateness required.

Local Modification. — City of Wilmington: 1983, c. 432.

Part 3B. Historic Properties Commissions.

§ 160A-399.1. Legislative findings.

Legal Periodicals. —
For survey of 1982 law on property, see 61 N.C.L. Rev. 1171 (1983).

Part 5. Building Inspection.

§ 160A-411.1. Qualifications of inspectors.

Editor's Note. —
Session Laws 1977, c. 531, s. 7, which is noted under this section in the Replacement Volume, was repealed by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 124.

§ 160A-417. Permits.

No person shall commence or proceed with

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,

(2) The installation, extension, or general repair of any plumbing system,

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a misdemeanor. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C.S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65; 1981, c. 677, s. 1; 1983, c. 377, s. 3; c. 614, s. 1.)

Editor's Note. — Session Laws 1983, c. 614, s. 5, provides that the act shall not apply to Wilson, Nash and Edgecombe Counties.

Effect of Amendments. —

The first 1983 amendment, effective Oct. 1, 1983, inserted "movement to another site" in subdivision (1).

The second 1983 amendment, effective June 24, 1983, substituted "five thousand dollars ($5,000)" for "twenty-five hundred dollars ($2500)" in the next-to-last sentence.

§ 160A-421. Stop orders.

Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons

therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance, with a copy to the local inspector. The Commissioner of Insurance shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal no further work shall take place in violation of a stop order. Appeals from a stop order based on violation of any other local ordinance relating to buildings shall be taken to the local official designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner. Violation of a stop order shall constitute a misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 5.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, inserted "involving alleged violation of the State Building Code or any approved local modification thereof" in the third sentence and inserted the next-to-last sentence.

§ 160A-425. Defects in buildings to be corrected.

CASE NOTES

Violations of Section Are Negligence Per Se. — Since the obvious purpose of this statute is to protect the lives and limbs of occupants of the buildings affected, and the Legislature has not provided otherwise, violations of it are negligence per se. Jackson v. Housing Auth., — N.C. App. —, 326 S.E.2d 295 (1985).

§ 160A-433. Records and reports.

The inspection department shall keep complete and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the North Carolina Department of Cultural Resources. Periodic reports shall be submitted to the city council and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1905, c. 506, ss. 30, 31; Rev., ss. 3004, 3005; 1915, c. 192, s. 12; C.S., ss. 2766, 2767; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 7.)

Effect of Amendments. — The 1983 amendment, effective Oct. 1, 1983, deleted "permanent," following "shall keep complete," in the first sentence and inserted the present second sentence.

Part 6. Minimum Housing Standards.

§ 160A-441. Exercise of police power authorized.

CASE NOTES

Cited in Wiggins v. City of Monroe, — N.C. App. —, 326 S.E.2d 39 (1985).

§ 160A-442. Definitions.

The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

(2) "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

(3a) "Manufactured home" or "mobile home" means a structure as defined in G.S. 143-145(7).

(1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1983, c. 401, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective May 27, 1983, in subdivision (2) deleted "or" preceding "structure," inserted "manufactured home or mobile home" thereafter, and added "except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose" at the end thereof, and added subdivision (3a).

§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective July 6, 1983, inserted "and any personal property, fixtures or appurtenances found in or attached to the dwelling" following "of the dwelling" in the second sentence of subdivision (6).

CASE NOTES

Cited in Wiggins v. City of Monroe, — N.C. App. —, 326 S.E.2d 39 (1985).

§ 160A-446. Remedies.

CASE NOTES

Cited in Wiggins v. City of Monroe, — N.C. App. —, 326 S.E.2d 39 (1985).

Part 8. Miscellaneous Powers.

§ 160A-456. Community development programs and activities.

(e) Repealed by Session Laws 1985, c. 665, s. 5, effective July 9, 1985. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — City of Durham: 1983, c. 255.

Effect of Amendments. — The 1983 amendment, effective July 21, 1983, rewrote former subsection (e).

The 1985 amendment, effective July 9, 1985, deleted subsection (e), relating to the expenditure of tax revenue for certain purposes.

§ 160A-457. Acquisition and disposition of property for redevelopment.

In addition to the powers granted by G.S. 160A-456, any city is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of Article 12 of this Chapter, or the procedures of G.S. 160A-514, or any applicable local act or charter provision modifying such procedures; or subsection (4) of this section.

(4) To sell, exchange, or otherwise transfer real property or any interest therein in a community development project area to any redeveloper at private sale for residential, recreational, commercial, industrial or other uses or for public use in accordance with the community development plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this Article; provided that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after approval of the municipal governing body and after a public hearing;

a notice of the public hearing shall be given once a week for two successive weeks in a newspaper having general circulation in the municipality, and the notice shall be published the first time not less than 10 days nor more than 25 days preceding the public hearing; and the notice shall disclose the terms of the sale, exchange or transfer. At the public hearing the appraised value of the property to be sold, exchanged or transferred shall be disclosed; and the consideration for the conveyance shall not be less than the appraised value. (1977, c. 660, s. 1; 1983, c. 797, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 amendment, effective October 1, 1983, added "or subsection (4) of this section" at the end of subdivision (3) and added subdivision (4).

§ 160A-458.2. Mountain ridge protection.

Cities may enact and enforce mountain ridge protection ordinances pursuant to Article 14 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 14 unless the city has removed itself from the coverage of Article 14 through the procedure provided by law. (1983, c. 676, s. 3.)

Editor's Note. — Session Laws 1983, c. 676, s. 4, makes this section effective upon ratification. The act was ratified July 5, 1983.

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

CASE NOTES

Applied in Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983).

§ 160A-461. Interlocal cooperation authorized.

CASE NOTES

Applied in Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983).

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

Legal Periodicals. —
For article, "Statutory Waiver of Municipal Immunity Upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

For survey of 1981 tort law, see 60 N.C.L. Rev. 1465 (1982).

CASE NOTES

Waiver of Immunity, etc. —
A city waives its immunity from civil liability in tort by purchasing liability insurance. However, immunity is waived only to the extent that the city is indemnified by the insurance contract. Gordon v. Hartford Accident & Indem. Co., 576 F. Supp. 203 (W.D.N.C. 1983), aff'd, 740 F.2d 961 (4th Cir. 1984).

Cited in Wiggins v. City of Monroe, — N.C. App. —, 326 S.E.2d 39 (1985).

§ 160A-492. Human relations, community action and manpower development programs.

Local Modification. — Mecklenburg: 1983, c. 119; city of Charlotte: 1983, c. 119.

Article 22.

Urban Redevelopment Law.

§ 160A-500. Short title.

CASE NOTES

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

§ 160A-503. Definitions.

The following terms where used in this Article, shall have the following meanings, except where the context clearly indicates a different meaning:

(19) "Redevelopment project" shall mean any work or undertaking:

a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;

d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas; including the making of loans therefor; and

e. To engage in programs of assistance and financing, including the making of loans, for rehabilitation, repair, construction, acquisition, or reconditioning of residential units and commercial and industrial facilities in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6; 1967, c. 1249; 1969, c. 1208, s. 1; 1973, c. 426, s. 75; 1981, c. 907, ss. 1, 2; 1985, c. 665, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 9, 1985, inserted "and commercial and industrial facilities" in paragraph (19)e.

CASE NOTES

Cited in Housing Auth. v. Clinard, 67 N.C. App. 192, 312 S.E.2d 524 (1984).

§ 160A-511. Interest of members or employees.

Local Modification. — City of Charlotte: 1983 (Reg. Sess., 1984), c. 964.

§ 160A-512. Powers of commission.

CASE NOTES

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

§ 160A-514. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.

(c) A commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property in a redevelopment project area to any redeveloper for any public or private use that accords with the redevelopment plan, subject to such covenants, conditions and restrictions as the commission may deem to be in the public interest and in furtherance of the purposes of this Article. In the sale, exchange, or transfer of property, the commission shall follow the procedure set out in either G.S. 160A-269 or G.S. 160A-270 for the sale of property by a city council.

(d) A commission may sell personal property having a value of less than five hundred dollars ($500.00) at private sale without advertisement and bids.

(1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1; 1973, c. 426, s. 75; 1985, c. 665, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Lenoir: 1983, c. 207; city of Fayetteville: 1983, c. 235; city of Goldsboro: 1973, c. 346; 1983 (Reg. Sess., 1984), c. 947; 1985, c. 281; city of Kinston: 1983, c. 207; town of Princeville: 1983, c. 265.

Editor's Note. — Session Laws 1985, c. 665, s. 3 provides: "The amendment of G.S. 160A-514(d) by this act does not modify or repeal any local act that modifies G.S. 160A-514(d) or its predecessor statute, former G.S. 160-464(d). Such a local act remains in effect, and a municipality subject to the local act may proceed either under it or under this act."

Effect of Amendments. — The 1985 amendment, effective July 9, 1985, rewrote subsections (c) and (d).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Interpretation of subsections (c) and (d) of this section. See Porsh Bldrs., Inc. v. City of Winston-Salem, 61 N.C. App. 470, 301 S.E.2d 530, cert. denied, 308 N.C. 675, 304 S.E.2d 757 (1983).

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

§ 160A-516. Issuance of bonds.

Local Modification. — City of Fayetteville: 1983, c. 235.

Article 23.

Municipal Service Districts.

§ 160A-536. Purposes for which districts may be established.

The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection works;

(2) Downtown revitalization projects;

(3) Drainage projects;

(3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(4) Off-street parking facilities; and

(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a municipal service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2; 1985, c. 580.)

Cross References. —
As to property taxes to provide for drainage projects or program, see § 160A-209.

Effect of Amendments. — The amendment, effective July 3, 1985, added subdivision (3a).

Article 25.

Public Transportation Authorities.

§ 160A-579. General powers of the authority.

OPINIONS OF ATTORNEY GENERAL

A public transportation authority may borrow funds from private lending institutions. See opinion of Attorney General to Mr. David D. King, Director, Division of Public Transportation of the North Carolina Department of Transportation, 54 N.C.A.G. 8 (1984).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1985

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1985 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina